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Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its sixth session* **

Chairperson-Rapporteur: Abdul Samad Minty (South Africa)

Summary

The present report is submitted pursuant to Human Rights Council decision 3/103 and resolutions 6/21 and 10/30. The report is a summary of the proceedings of the sixth session of the Ad Hoc Committee on the Elaboration of Complementary Standards. With the input of several experts in the relevant fields, substantive discussions took place on the many topics agreed at the fifth session. During the session, the Committee also considered the questionnaire sent out by the Office of the United Nations High Commissioner for Human Rights and the updated summary of responses prepared by the Chairperson-Rapporteur pursuant to Human Rights Council resolution 21/30.

* The annexes to the present report are being circulated in the language of submission only.
** Late submission.

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I. Introduction

1. The Ad Hoc Committee on the Elaboration of Complementary Standards submits the present report pursuant to Human Rights Council decision 3/103 and resolutions 6/21 and 10/30.

II. Organization of the session

2. The Ad Hoc Committee held its sixth session from 7 to 17 October 2014. During the session, the Committee held 15 meetings.

A. Attendance

3. The session was attended by representatives of Member States, non-Member States represented by observers, intergovernmental organizations and non-governmental organizations (NGOs) in consultative status with the Economic and Social Council.

B. Opening of the session

4. The 1st meeting of the sixth session of the Ad Hoc Committee was opened by the Chief of the Anti-Discrimination Section, Office of the United Nations High Commissioner for Human Rights (OHCHR). The United Nations High Commissioner for Human Rights made an opening statement in which he recalled that the Committee's work was to think of ways to strengthen the protection of all persons from the scourges of racism, racial discrimination, xenophobia and related intolerance, as articulated in the Durban Declaration and Programme of Action, which continued to guide the work of the Office. The task of the Committee was to indicate how the international community could ensure greater decency — greater dignity, equality and fairness — for the millions of victims of those violations. He expressed confidence that the Committee would achieve more progress during the session, fulfil its mandate and move forward, providing guidance on ways to address racism, racial discrimination, xenophobia and related intolerance more effectively.

C. Election of the Chairperson-Rapporteur

5. At the 1st meeting, the Ad Hoc Committee elected Abdul Samad Minty, Permanent Representative of South Africa to the United Nations Office at Geneva, as its Chairperson-Rapporteur, by acclamation.

6. The Chairperson-Rapporteur thanked the High Commissioner for his participation and his opening statement, and thanked the Committee for his own re-election, noting that he would work collectively with all partners and members of the Committee. In paragraph 199 of the Durban Programme of Action, the World Conference had recommended that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects. The Committee's discussions would be continued with the incremental approach adopted in previous sessions, offering members the opportunity to further reflect on and understand issues to be discussed, as well as their link to the mandate of the Committee and paragraph 199 of the Programme of Action. The format of the outcome of the session would be determined by

the discussions that would take place during the session. On the basis of the consensus that had been achieved during the previous two sessions, the Chairperson-Rapporteur encouraged the Committee to continue to focus on the plight of victims and to ensure unconditional respect for human dignity. In that regard, he considered it useful to explore possibilities for an international regulatory framework for xenophobia given that its more aggressive manifestations needed stronger measures. He noted in particular the blatant acts of racism and xenophobia in and around soccer fields that continued to be witnessed in many countries because adequate action had not been taken to counteract them.

D. Adoption of the agenda

7. At the 1st meeting, the Ad Hoc Committee adopted the agenda for the sixth session.

E. Organization of work

8. The Chairperson-Rapporteur introduced the draft programme of work. The programme of work (see annex III) was adopted at the 1st meeting.

9. The Chairperson-Rapporteur invited general statements about the session from delegations and participants. Many delegations warmly welcomed the opening statement and participation of the High Commissioner.

10. The representative of Ethiopia, speaking on behalf of the African Group, renewed the commitment of the Group to the work of the Committee and recalled Human Rights Council decision 3/103, in which the Council had mandated the Committee to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter the Convention), filling the existing gaps in the Convention and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred. The Group remained concerned that limited progress had been made in elaborating a complementary standard to the Convention due to unwarranted discussions on the very need for complementary standards. The representative stressed the need to address victims of profiling in areas elaborated in the list of topics of the second session, as those victims required of the Committee better protection, maximum remedies and total elimination of impunity for those acts of racism. The African Group called upon all regional groups to further their political commitment to concluding complementary standards and enhancing the fight against racism, racial discrimination, xenophobia and related intolerance.

11. The Ambassador of Brazil offered the support of the Permanent Mission of Brazil to the United Nations in Geneva for the work of the Ad Hoc Committee. Highlighting the multicultural and multiracial society of Brazil, the Ambassador underlined the importance of the Durban Declaration and Programme of Action to Brazil and that instrument's important contribution to the fight against racism, racial discrimination, xenophobia and related intolerance. Referring to measures to counter racism, he noted that affirmative action measures were at the core of the domestic politics of Brazil.

12. The Ambassador of Pakistan, on behalf of the Organization of Islamic Cooperation (OIC), pointed to the increasing discrimination against Muslims and to a general trend of islamophobia around the world, which were impediments to peaceful cohesion. He underscored the importance of paragraph 199 of the Durban Programme of Action and of Human Rights Council resolution 16/18, as instructive for combating racism, racial discrimination, xenophobia and related intolerance. He underlined the need to criminalize incitement to racial, national and religious hatred, and stated that the Rabat Plan of Action

on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence was seen as a useful basis for further discussions.

13. The Ambassador of Algeria stated that Algeria supported the statements made by the representative of Ethiopia and the Ambassador of Pakistan, who had spoken on behalf of the African Group and of OIC, respectively. He noted an increase in xenophobia and racist acts, and their impact on migrants, refugees and asylum seekers. The phenomenon of xenophobia was spreading worldwide, and the number of victims was also increasing; he emphasized that victims were affected in a "moral" as well as in a "physical" sense. Algeria supported the mandate of the Ad Hoc Committee and urged a victim-centred approach to its work. It would be important to look at the specificity of existing instruments.

14. The representative of Morocco stated that Morocco supported the statements made on behalf of the African Group and on behalf of OIC. Morocco attached particular importance to the work of the Committee. He noted an upsurge in racist and xenophobic thinking and actions worldwide and cautioned against a one-directional approach to the Ad Hoc Committee's work. He noted a substantial threat to the framework already in place and said that the Durban Declaration and Programme of Action, along with the Vienna Declaration and Programme of Action, served as important sources of information. The delegate referred to a need to bring equilibrium to the international community, and thanked delegations that had contributed positively to the work of the Committee. The Rabat Plan of Action provided a solid approach to issues being addressed by the Committee.

15. The representative of the European Union stated that racism, racial discrimination, xenophobia and related intolerance ran counter to the principles that underlay the European Union and that were common values of all European Union member States, namely, respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. She quoted the declaration made by the High Representative of the Union for Foreign Affairs and Security Policy on behalf of the European Union on the International Day for the Elimination of Racial Discrimination: "We must act more resolutely to tackle all forms of intolerance, racism, xenophobia and other types of discrimination. In times of economic crisis, the dangers of rising racism and xenophobia, fuelled in part by increasing unemployment, and insecurity about the future, are very real. It is in these challenging times that our commitment to combating racism must be relentless." Priority should be given to the effective implementation of existing international human rights law, in particular the Convention.

16. The representative of the Bolivarian Republic of Venezuela offered his country's support for the work of the Ad Hoc Committee and expressed regret that some countries still did not support the Committee. He urged the endorsement and implementation of what had been agreed by consensus in paragraph 199 of the Durban Programme of Action, in order to address racism, racial discrimination, xenophobia and related intolerance worldwide.

17. The representative of Switzerland, on behalf also of Argentina, Armenia, Brazil, Chile, Colombia, Japan, Mexico and Uruguay, expressed appreciation for the intersessional preparations and support for the programme of work and the use of expert presentations during the session. He emphasized the importance of the Convention and the Durban Declaration and Programme of Action to the work of the session, and said that the delegations on whose behalf he spoke would engage constructively in determining whether there were gaps in the normative framework and how they would be addressed at the session.

18. The representative of South Africa aligned her delegation with the general statement delivered by the representative of Ethiopia, on behalf of the African Group. She welcomed the incremental approach to dealing with the topics, as guided by the Chairperson-Rapporteur. South Africa remained concerned that paragraph 199 of the Durban Programme of Action had become contested, and was also concerned about the lack of progress in elaborating complementary standards to the Convention; she reminded the Committee of its mandate, quoting decision 3/103. In the view of South Africa, the task of the Committee was to address gaps and she therefore urged delegations to transcend their entrenched positions and move in the direction of providing adequate protection and remedies to victims of racism and putting an end to impunity for acts of racism, racial discrimination, xenophobia and related intolerance. She expressed the delegation's commitment to working constructively to expedite elaboration of the urgently needed complementary standards to the Convention.

19. The representative of Indonesia stressed that the phenomena of racism, xenophobia and related intolerance still existed and, in some cases, had intensified and took various forms. The important work of the Committee was to achieve a concrete result in respect of what was meant by complementary standards to the Convention. Hate speech with religious and ethnic dimensions was in need of attention. The issue touched on freedom of religion vis-à-vis freedom of expression and opinion. Indonesia valued highly freedom of religion and freedom of expression and believed that those freedoms could go hand in hand within the framework of international human rights law at the national level. Indonesia also realized that those phenomena had a transboundary character, partly due to the rapid development of information and communication technology. Indonesia was of the view that there might be a need for an international instrument to prevent effectively incitement to hostility and violence based on religion or belief.

20. The representative of the United States of America stated that racism was incompatible with his country's values. He underlined the importance of the Committee's work, observing that the mandate included promoting consensus action plans and that it should not work on elaborating confusing new international law instruments. Xenophobia was a serious problem; however, addressing it did not require new or revised treaties, but rather the implementation of existing human rights law. The delegation was of the view that those conclusions had been echoed in the opinions of experts who had previously addressed the Committee.

21. The representative of Nigeria aligned his country with the statement made on behalf of the African Group. He highlighted issues of stigmatization and xenophobia and the importance of strengthening international protection for the victims of such abuses and emphasized that refugees, asylum seekers and migrants were particularly vulnerable, underscoring the importance of the work of the Committee.

III. General and topical discussions

A. Prevention and awareness-raising

22. At the 2nd meeting, the Ad Hoc Committee heard presentations from Patrick Gasser, Senior Football and Social Responsibility Manager, Union of European Football Associations (UEFA), Jonas Burgheim, Deputy Head, United Nations Office on Sport for Development and Peace, and Pavel Klymenko, a representative of the Football against Racism in Europe (FARE) Network, on the agenda topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance" as it related to sport.

23. At the 3rd meeting, the Chairperson of the Working Group of Experts on People of African Descent, Mireille Fanon-Mendès-France, gave a presentation on the same agenda topic. At the 4th meeting, Karel Fracapane, of the Section of Health and Global Citizenship Education, United Nations Educational, Scientific and Cultural Organization (UNESCO) briefed the Committee on the Organization's work on that agenda topic.

24. For summaries of those presentations and the discussions with the meeting participants that followed, see annex I, section A.

B. Questionnaire conducted pursuant to paragraph 4 of Human Rights Council resolution 21/30

25. At the 5th meeting, the Chairperson-Rapporteur provided an overview of the updated summary of the responses received to the recirculated questionnaire conducted pursuant to paragraph 4 of Human Rights Council resolution 21/30. In a note verbale of 21 July 2014, he had invited Permanent Missions in Geneva and New York that had not forwarded responses to the questionnaire, and had indicated that additional information from States that had previously responded to the questionnaire would be welcome.

26. An additional 13 replies had been received by the deadline of 19 September 2014. The Chairperson-Rapporteur suggested that the questionnaire and the summary of the replies be considered in a collective manner that could help the Ad Hoc Committee improve the information in the updated summary of responses, and look at weaknesses and make suggestions to address them. Both approaches to the work of the Committee — through an additional convention or without one — were important as long as improved conditions for victims were the result.

27. The Chairperson-Rapporteur introduced the document that summarized the responses to the questionnaire and invited participants to reflect on how to proceed with the outcome and how to take the issue of the questionnaire forward. The responses were still not representative; they were anecdotal, but were nevertheless useful for the various aspects of the discussion. The original replies received to the questionnaire were available on the OHCHR website.

28. The Chairperson-Rapporteur posed various questions, referring to the role of institutions and legislation, constitutional provisions, remedies for victims and positive measures. He pointed out that most of the new replies provided interesting information on the issue of xenophobia, which appeared to be a concern affecting many countries around the world. In that regard he inquired about initiatives undertaken at the national level, and asked whether it was possible that some countries or regions did not face issues related to xenophobia. He inquired about the difference between hate crimes and xenophobic crimes, and asked whether xenophobia was a sentiment or a motivation for an act. He invited participants to consider xenophobia as a spectrum. The Chairperson-Rapporteur also asked whether combating extremism was the same as combating discrimination and xenophobia, inquired about the effectiveness of national mechanisms, and asked whether the definition of "national mechanism" should be understood narrowly or construed broadly and whether the Committee on the Elimination of Racial Discrimination was effective, especially with respect to xenophobia. He also asked which recommendations of that Committee had been implemented by States and whether reservations were proving to be a significant obstacle for the implementation of the Convention.

29. The representative of the European Union made preliminary comments, expressing disappointment that the rate of response to the questionnaire remained low. She emphasized that some regions continued to be underrepresented in those responses, and that the European Union would like to hear from them. Pointing to the importance of the

Convention, she reiterated that States that had not yet ratified or acceded to the Convention should do so. The long-standing position of the European Union was that full implementation of the existing standards was key; only one of the new replies mentioned the need for complementary standards.

30. The representative of Brazil stated that, according to the responses received, both xenophobia and national mechanisms were concerns for countries. However, there was no consensus yet on the question of gaps. Further discussion was needed on both topics, and the views of the Committee on the Elimination of Racial Discrimination on those issues were essential. Alternatively, the Ad Hoc Committee could reflect on the possibility of favouring the development of, inter alia, plans of action and guidelines on those issues. With regard to procedural gaps, the responses to the questionnaire indicated that the Committee on the Elimination of Racial Discrimination still lacked an official mandate to engage in actions such as visits to countries and follow-up to its recommendations, which were important for the fulfilment of its functions. Treaty bodies created subsequently had provisions on those issues. Therefore, additional norms could be needed in that area.

31. The representative of the Bolivarian Republic of Venezuela highlighted the importance of new complementary standards to combat racism, racial discrimination, xenophobia and related intolerance, and referred to the need to criminalize discrimination in all its forms. Venezuelan society was multi-ethnic and the Government was committed to implementing the 2011 law against racial discrimination, article 11 of which addressed xenophobia and racist acts. The representative also highlighted the positive role of civil society with regard to the prevention and eradication of racial discrimination, and reported on the establishment of a national institution against racial discrimination as an effective implementation of provisions of the Convention and the Durban Declaration and Programme of Action. The Government was committed to collecting disaggregated data, and the recent 2011 census would provide more detailed information on the population.

32. The representative of the Russian Federation also supported the need for the development of additional standards, emphasizing that existing international standards were proving ineffective. He encouraged delegations to consider drafting new complementary standards and making improvements to the effectiveness of existing mechanisms.

33. The representative of Morocco informed the meeting that Morocco had adopted a new migration policy, which called for a human rights-based approach. Migrants required legal recognition and rights in areas such as access to housing and education. The new policy was comprehensive and covered asylum seekers and refugees. He pointed out the need to move away from a security-oriented approach that led to a fortress mentality, and acknowledged problems with data collection, adding that currently the country was conducting a census that would influence positively the development of public policies. He highlighted the importance of vital statistics.

34. The Chairperson-Rapporteur asked whether constitutions and legislation were sufficient to address racism, racial discrimination, xenophobia and related intolerance, and asked how Governments could move from legal measures to the protection of victims on the ground. He invited participants to share good practices and difficulties in that regard.

35. The representative of Morocco said that there were different approaches to combating racism, racial discrimination, xenophobia and related intolerance. On one side there were provisions in the Constitution to combat discrimination. There was also the operational side, taking into consideration concrete facts, since Morocco was a country of origin, transit and destination for migrants. Those combined factors left Morocco with a large number of irregular migrants. A new asylum and migration policy was needed. In that regard, a report had been submitted to the Government, which had decided to adopt a new policy. The representative noted that day-to-day issues at the practical level should be

addressed. Early warning efforts had highlighted the need for amended legal provisions. New bills on migration and refugees had been adopted. The challenge was translating those legal norms into practice.

36. The representative of Italy highlighted the strong principles contained in the Italian Constitution, which applied European Union directives that created obligations. Institutions such as the National Office against Racial Discrimination were entrusted with protecting victims; access by victims to the Office's website was easy and there was a 24-hour phone line. He acknowledged that additional resources were needed. Referring to question 2 (vi) of the questionnaire on article 14 of the Convention, he said that there was no information concerning how many States had accepted article 14. He highlighted the large number of reports overdue for submission to the Committee on the Elimination of Racial Discrimination as a serious issue, stating that many countries had never submitted a report, or were very overdue in doing so.

37. The Chairperson-Rapporteur confirmed that the large number of reports overdue to all treaty bodies was a general problem, which had been acknowledged during the universal periodic review process. Some countries did not have the resources to submit reports.

38. The representative of Egypt indicated that Egypt was a "compatible and consistent society" in terms of race and religion, and that there were no problems with minorities in terms of racial discrimination in its latest Constitution. All citizens were equal, and everyone was equal before the law. There was no xenophobia nationally and citizens considered themselves Egyptians, although they might have another origin. The National Council for Human Rights was an independent body that dealt with all issues of human rights and received complaints from victims. It had the required resources. The National Council referred complaints to judicial authorities and to the courts, and facilitated access to the judicial process.

39. The representative of Uruguay said that Uruguay had ratified the Convention. In addition to the Constitution, there were a series of specific laws on issues related to discrimination, for example, on migrants, including the rights of migrants, family reunification and non-discrimination on any grounds. A rapid response programme had been set up by the migration authorities, allowing them to issue identity documents within 48 hours. In 2004, a law on racial discrimination had been adopted and a commission on racism and discrimination had been created to implement the law. There were also policies to prevent discrimination. The commission had introduced a draft bill to the parliament on a quota for people of African descent, which had been adopted. During the universal periodic review of Uruguay the Government had committed itself to drafting a plan of action against racial discrimination; it was in the second phase, focusing on the drafting of the plan.

40. The representative of South Africa highlighted the fact that the 1996 Constitution recognized the injustices of the country's past, focused on a nation united in its diversity, and was aimed at creating racial harmony. Chapter 9 of the Constitution had established the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. In 2002, the country had hosted the African Union Summit to strengthen the cohesion of African people. In 2012 it had hosted the Global African Diaspora Summit, which had given concrete meaning to the concept of "one family". South Africa also played an important role in the New Partnership for Africa's Development (NEPAD).

41. The representative of Algeria stated that the country's Constitution addressed racial discrimination, and that there were laws that gave effect to the principle of non-discrimination. Article 29 of the Constitution banned any discrimination; all codes, including the criminal and electoral codes, prohibited discrimination. He emphasized the importance of equality of persons, and said that particular attention was paid to issues

concerning migrants and their families. Legislative and institutional measures were in place to eliminate discrimination; access to civil justice was no longer conditional for foreigners; and interpretation and legal assistance were also available to foreigners in the country.

42. The representative of Switzerland stated that xenophobia was not a legal term under its national law and that the public service must respect fundamental rights. Racial discrimination was punishable in Switzerland. The law provided sufficient protection against discrimination, but it was important to strengthen the application of current legislation. He informed the meeting about three institutions: (a) the Federal Commission against Racism, established in 1995, which had been monitoring activities in order to identify racism and racial discrimination, working to promote better understanding, emphasizing prevention and hearing concerns of minorities; (b) the Service for Combating Racism, which had been promoting coordination and setting measures to combat racism since 2001; and (c) the Federal Commission for Migration, which, since 2008, had been bridging the gap between the authorities and civil society on migration issues.

43. The representative of Greece informed the Committee that, three weeks previously, the Greek Parliament had adopted a new anti-racist law, which prohibited racist speech and violence against individuals on the basis of race and other forms of discrimination and included various measures and sanctions, such as imprisonment and fines. If such acts were performed by a public servant, it was considered an aggravating factor, and the sanction was doubled. The delegate also noted the importance of public awareness measures, informing the meeting about some initiatives organized in Geneva by the Permanent Mission of Greece, such as a side event to the Human Rights Council on equality and sport, and an event organized with the Permanent Mission of South Africa featuring the lawyer of the late President Nelson Mandela, George Bizos.

44. The Chairperson-Rapporteur pointed out the role of the judiciary in interpreting law. He said that it would be interesting to look at case law and how the judiciary took its own responsibility and created a precedent for other cases. He also said that national mechanisms were mandated by legal provisions; however, it was important to examine their effectiveness and how the population was represented in such institutions. In addition, he referred to procedural gaps with regard to the Convention, especially in relation to xenophobia.

45. The representative of the Russian Federation emphasized that reservations to the Convention had a negative impact on its implementation. For example, with regard to article 4, in the era of modern technology an expansion of hate speech was taking place and there was a need for the withdrawal of reservations to that article. The Russian Federation did not have reservations.

46. The representative of Brazil said that the Ad Hoc Committee should discuss further whether the Convention had substantive gaps. With regard to procedural gaps, during the past two sessions, experts from the Committee on the Elimination of Racial Discrimination had noted that they did not have a mandate for country visits and that it would be useful for them to have such a mandate, set out in an additional document. That point had also been made in the replies to the questionnaire.

47. The representative of the United States emphasized that the best way to respond to hate speech was with more speech. He noted that the Convention clearly prohibited discrimination and acts of violence and that there were no gaps in the Convention with regard to xenophobia as a legal matter. There were clearly gaps in the effective implementation of existing obligations and that was a productive area for continued discussion, to which the United States looked forward.

48. The representative of South Africa recalled that reservations were permissible unless they were incompatible with the treaty; that included reservations to article 4. She

highlighted the fact that, without additional standards, contemporary forms of racism and racial discrimination would go unpunished, and noted the importance of the Committee on the Elimination of Racial Discrimination's general recommendation No. 15 (2004) on discrimination against non-citizens.

49. The representative of the European Union said that European Union member States were required, in accordance with directives, to establish equality bodies, which were independent organizations that, inter alia, could conduct independent surveys, publish independent reports and issue recommendations. Equinet was a European network of equality bodies comprising 38 organizations. With regard to hate speech, full respect for freedom of expression and the importance of the existing international framework were underlined. The representative referred to the 2008 Council of the European Union framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, which included intentional public incitement to racist or xenophobic hatred or violence as an offence and required amendments to criminal law.

50. The representative of Morocco pointed out the need to control hate speech on the Internet; such control was a major concern for many States, but should not in any way detract from State efforts to combat hate speech through traditional media. Morocco had developed legal measures, including article 6 of the Constitution, which enshrined equality before the law, and a criminal code and press code. Journalists inciting hatred against foreigners were punished in Morocco. It was important to interact effectively with the Committee on the Elimination of Racial Discrimination and submit regular reports.

51. The representative of the United States expressed his country's strong disagreement with regard to restrictions on freedom of expression. He emphasized the fact that such restrictions were dangerous and that Governments should not control expression. Undemocratic Governments misused such measures.

C. Special measures

52. At the 6th meeting, the Ad Hoc Committee commenced a discussion on the topic "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance". The meeting was chaired, exceptionally, by Ephrem B. Hidug of the Permanent Mission of Ethiopia to the United Nations Office at Geneva. During the meeting, Carlos Vázquez, a member of the Committee on the Elimination of Racial Discrimination, gave a presentation on the treatment of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination and in the practice of the Committee.

53. At the 7th meeting, Theodore Shaw, Professor and Director of the Center for Civil Rights of the Chapel Hill School of Law, University of North Carolina, also gave a presentation on the topic of special measures. At the 8th meeting, Elisa Alonso Monçores, a researcher at the Institute of Economics, Federal University of Rio de Janeiro in Brazil, gave a presentation on "Affirmative actions in Brazil: recent experience and social indicators".

54. At the 9th meeting, Dimitrina Petrova, Executive Director of the Equal Rights Trust, gave a presentation on the agenda topic.

55. For summaries of the presentations and the respective discussions with participants that followed, see annex I, section B.

D. National mechanisms

56. At the 10th meeting, Pedro Mouratian, President, National Institute against Discrimination, Xenophobia and Racism (INADI) in Argentina, briefed the Ad Hoc Committee on the work of his organization on the topic "Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestation of racism, racial discrimination, xenophobia and related intolerance".

57. For a summary of the presentation and the discussion with participants that followed, see annex I, section C.

E. Xenophobia

58. The topic "Xenophobia" was discussed at the 11th meeting. A presentation was made by Ioannis Dimitrakopoulos, Head of the Equality and Citizens' Rights Department, European Union Agency for Fundamental Rights.

59. For a summary of the presentation and the discussion with participants which followed, see annex I, section D.

F. General discussion and exchange of views, 12th meeting

60. The Ad Hoc Committee held a general discussion and exchange of views at its 12th meeting.

61. The representative of the European Union made some preliminary observations and was of the view that the reissued questionnaire had produced an outcome that was, in terms of substance, very similar to that of the first questionnaire. Some regions were well represented, including European countries, while representative information from some other regions was still lacking. The Ad Hoc Committee's discussions confirmed that challenges remained. Many positive steps and best practices from various parts of the world were also highlighted. Situations varied and solutions addressing racism and related issues took different forms, depending on the country, hence there was no one-size-fit-for-all approach. Regarding the issue of complementary standards, the representative noted that, in the view of the European Union, the sixth session had confirmed the assessment that more needed to be done by States and stakeholders to implement and monitor the implementation of existing standards more vigorously. The Convention remained the key international instrument and the European Union regretted its lack of universal ratification. The European Union saw no evidence that the lack of international legal standards would prevent efforts to fight those phenomena.

62. The representative of the United States noted, in reference to the discussion during the 11th meeting, that immigration reform was a priority of its Administration, which had emphasized that there needed to be a pathway to citizenship for the 11 million illegal immigrants in the United States. With regard to the large numbers of unaccompanied children that had received much attention, the United States was working with neighbouring concerned Governments to address root causes of emigration and to inform about the risks of migration.

63. The representative of Brazil suggested that the Committee could start elaborating documents, such as plans of action or guidelines, to fill the interpretative gap that Ms. Petrova had mentioned in her presentation. The representative of Brazil said that

achieving a positive impact in victims' lives should have the utmost priority, and said she looked forward to the discussion on procedural gaps.

64. The representative of the African Union underlined that it was the established mandate of the Ad Hoc Committee to elaborate complementary standards. It was not the responsibility of the Committee to consider whether those standards were necessary or whether there were any gaps, as that had already been decided in the Durban Declaration and Programme of Action and by the Human Rights Council. A variety of views had been expressed over the course of the sixth and previous sessions and it was time to move forward and draft a number of provisions. The Committee should not continue to discuss endlessly, but should draw on existing conclusions and be true to its mandate. He pointed to the issue of immigration mentioned by the representative of the United States and said that achieving progress in that area would be important. He pointed to racism and sport as an important area where the Committee could potentially make a contribution.

65. The representative of South Africa, on behalf of the African Group, reiterated that, through decision 3/103, the Human Rights Council had established the Ad Hoc Committee and provided the clear mandate to elaborate "as a matter of priority" conventions or additional protocols to the Convention. That decision did not speak about considerations or discussions concerning possible gaps or the need for standards. Neither did paragraph 199 of the Durban Programme of Action leave any room for such considerations. There was a clear mandate to elaborate complementary standards. That focus was clear, without any doubt. The African Group regarded the ongoing discussion, and the insistence on the implementation of the Convention, as flawed, since additional standards had, in numerous other examples, been elaborated by the international community. Victims of racial profiling required better support; it was time for the total elimination of impunity for perpetrators of racism. Only with political will could the complementary standards be completed; such will must be found, as there was a need to move forward.

66. The representative of Algeria noted that there were gaps in the legal framework, in particular concerning victims' rights. Consequently, work needed to be done in order to implement a victim-centred approach to combating racism, racial discrimination, xenophobia and related intolerance. He called on all delegations to focus on the plight of victims. The presentations during the past sessions had provided enough material, a number of questionnaires had been circulated, discussions had taken place, also in the framework of the Human Rights Council, and it could not be argued that there were insufficient contributions upon which to move forward. Issues such as migration needed the Committee's attention and the representative referred to the recurrent issue of working methods of the Committee and of other Committees of the Council. Mandates were being challenged regularly. That was, however, not the role of the Ad Hoc Committee, since there was a clear mandate, and it was time to make progress on the very mandate that was negotiated in Durban.

67. The representative of Pakistan, on behalf of OIC, noted that important contributions had been made by experts during the session, and stated that it was impossible to question the mandate of the Committee. Throughout the presentations it was difficult to understand why the Committee had discussed the necessity of complementary standards, as the mandate already reflected an assumption that such necessity existed. OIC was of the opinion that there was a need for complementary standards. During the twenty-fifth session of the Human Rights Council, under agenda item 9, a representative of OIC had recommended that there should be an optional protocol that dealt with all forms of racism, racial discrimination, xenophobia and related forms of intolerance. Therefore, OIC recommended that an additional protocol to the Convention be drafted which dealt with racism in a comprehensive manner, and that the next session of the Ad Hoc Committee

should be dedicated to substantive gaps. In the view of OIC, it was time to look for a way forward and to consider new forms of intolerance, including religious intolerance.

68. The representative of Switzerland said that, in his view, positions were split between those who defended the mandate without a clear idea of what the gaps were, and those who reiterated that implementation was key and that the Convention did not need further protocols. Switzerland had tried to identify areas where gaps could be identified; however, it had been unable to do so. Consequently, Switzerland did not question the mandate, but had doubts whether it could be fulfilled. A redrafting of the Convention was not an option, since the substantive case for required new laws had not been made. The subject of xenophobia had already been clarified two years ago and the tools to address that phenomenon and others were in place. There was never one recipe that worked in all situations and it was not a good idea to impose a tight prefabricated system on all States. The main principles that would guide the fight against racism existed. It was now essentially a question of implementation.

69. The representative of the Bolivarian Republic of Venezuela reiterated his delegation's firm support for the mandate of the Ad Hoc Committee. The Committee had been working for six years and had examined international standards and non-compliance with those standards. The Durban Declaration and Programme of Action provided the mandate to close any gaps concerning new forms of discrimination, and the Committee should focus its work on that area. He supported the statements made by the representative of South Africa on behalf of the African Group, and by the representative of Pakistan on behalf of OIC, and urged more substantive work from the Committee. He was of the view that the various presentations showed that there were new forms of racism, and the content of those presentations would allow the Committee to draft new complementary standards to the Convention. The mechanism had to be improved to cover new forms of racism, xenophobia, hate speech and incitement to hatred, including towards migrants.

70. The representative of Germany stressed that the Committee had to find a way forward, and the ongoing exchange in the room was important. However, in the representative's view, one had to listen to the experts that were invited, who had all stressed that there was no need for new standards to battle phenomena such as xenophobia. Germany fully supported the European Union statement that there were no substantive gaps in the Convention; however, countries had to improve their implementation of the Convention. That was also the case in other human rights areas. It was not customary to question automatically the underlying standards in those areas, but it was good practice to focus on implementation. In that respect, the representative supported the representative of Switzerland's statement.

71. The representative of Egypt stated that the very fact that the Ad Hoc Committee existed showed the need for an update of the legal framework. It was necessary to identify existing gaps in legislation and assess how they could be filled. The representative supported the proposal made by the representative of Pakistan, on behalf of OIC, concerning the elaboration of an additional protocol, as it would be an essential step by the Committee.

72. The representative of Indonesia noted that the question of implementation needed to be addressed, as did the need for complementary standards. The idea of complementary standards had been accepted when the Ad Hoc Committee had been established, and it should not be contentious. On the substantive points, the representative supported the statements made by the representative of Pakistan on behalf of OIC and by the representative of Egypt. In Indonesia there was a real gap due to cross-border issues related to incitement to hatred. Indonesia felt that perpetrators went unpunished but had a great impact on the domestic situation in the country, which could lead to unrest. Consequently it

had become clear that there were substantive gaps when it came to transboundary incitement to hatred based on religion.

73. The representative of Morocco said that there was a clear reason for the existence of the Ad Hoc Committee, and that the relevant resolutions and decisions and the Durban Declaration and Programme of Action provided a firm legal basis. The discussion of whether the Committee should exist should not proceed. The Durban Declaration and Programme of Action had been adopted in 2001 and now, after 13 years, racism was still alive, as many presentations had underlined. The Committee was not only compelled to restrict racism but to eradicate it, and it could not stand idle. The Committee had held six sessions and it was clear that large tasks lay before it. It needed to strengthen international legislation, and the consensus was not to rewrite, but to refine, the Durban Declaration and Programme of Action. In the view of Morocco, inaction meant that the Committee was not fulfilling its mandate and was committing an "offence". The Committee's work was necessary and could take several forms; it was up to the Committee to decide which one would prevail.

74. The representative of Tunisia expressed support for the statements made by the representative of South Africa on behalf of the African Group and by the representative of Pakistan on behalf of OIC. The current international framework was inadequate because there were new forms of racism, and political movements that ran on platforms that profited from hatred against foreigners could be observed. No act of racism could be left unpunished, and the international community needed to complete the legal arsenal. Victims were often unwilling to report incidents or file charges, as the Committee had heard in the presentations. Since the adoption of the Convention, racism had changed, surfacing regularly in combination with discrimination on economic and religious grounds. Ongoing economic crises exacerbated racial discrimination. Many other factors, such as religion, were not addressed by the Convention. As noted by the representative of South Africa, the Committee was not in a position to reinvent the legal norms, but needed to address racism as it appeared today. In addition, the communication revolution had added a new factor.

75. The representative of Pakistan clarified that OIC did not suggest that the drafting of an optional protocol meant redrafting the Convention. However, a number of human rights conventions had optional protocols. Consequently, he proposed that a substantive discussion be held at the Ad Hoc Committee's next session to consider actual substantive gaps to be filled. The Committee had enough raw material from which to draw.

76. The representative of Germany noted that, indeed, nothing prohibited countries from taking action to fight racism. Once more, the central questions were whether the Convention was being implemented and whether national instruments were being adapted in accordance with international human rights norms.

77. The representative of Switzerland reiterated that the Committee had been engaged in debate for six sessions and had not yet identified any substantial gaps that were so urgent that the Committee should elaborate complementary standards. However, in the view of Switzerland, the Committee had one clear message: countries had to fight the phenomena of racism. Switzerland doubted that any complementary standards would lead to any further action. In addition, it had to be noted that most optional protocols concerned communications and addressed clearly identified needs.

78. The representative of Algeria stated that there was a clear need for standards and that it was necessary to fill gaps that had been identified during prior sessions. The Committee had heard repeated calls to improve implementation but there were clear limits to the implementation of existing instruments. In the view of Algeria, it had emerged from the general discussions that current instruments were not sufficient to address all forms of discrimination.

79. The representative of Tunisia added that work on a draft protocol did not prevent countries from implementing the Convention. The existing gaps, however, had to be addressed, and xenophobia and racial profiling were such gaps. The representative expressed optimism that the Ad Hoc Committee could progress and noted that countries were in no way hindered by the work of the Committee from taking action at the national level.

80. The representative of the African Union said that the creation of a rule was just a first step towards its implementation, as a rule might not gain universal acceptance. States could always decide if they wished to become party to a treaty.

81. The Chairperson-Rapporteur summarized the discussion and noted that differences of opinion still remained. It appeared that delegations had not considered the presented evidence but had adhered to their original policy positions.

82. The Durban Declaration and Programme of Action had been adopted by consensus and there had been no objections to the document at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001. States that had participated in that decision should maintain an element of goodwill, such as had existed at that time.

83. The Ad Hoc Committee had had a large number of meetings due to the ensuing differences and divisions between some groups of countries. One group insisted there was no need for a new law, but that it was preferable to focus on better implementation. Another view was that one could aim at better implementation but that was not enough. A protocol that dealt with new phenomena, that group insisted, was needed.

84. The Chairperson-Rapporteur underlined that, according to various statements, racism had been on the rise in many forums, sectors and regions. As explained during the session, racism in certain sectors, such as in football, was marked and there was already a debate within the International Federation of Associations of Football (FIFA) and other federations on how to address that issue.

85. The Chairperson-Rapporteur expressed reluctance to continue with a perpetual stalemate and asked delegations to consider the way forward in order to identify a solution before the end of the session. He adjourned the formal meeting and the Ad Hoc Committee proceeded with an informal meeting of regional coordinators and interested delegations.

G. Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination

86. At the 13th meeting, Anwar Kemal, a member of the Committee on the Elimination of Racial Discrimination, made a presentation on "Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination". For a summary of the presentation and the discussion that followed, see annex I, section E.

H. General discussion and exchange of views, 14th meeting

87. At the 14th meeting, the Ad Hoc Committee held another general discussion and exchange of views. The Chairperson-Rapporteur recalled the need to consider what was to be done with the list of new topics and what steps should be taken with regard to the questionnaire.

88. The representative of the United States addressed the issue of reservations to the Convention, and the purpose of the Ad Hoc Committee and its future work. With regard to

reservations, during discussions there had been criticism of States that had made reservations to the Convention, in particular to article 4. The representative noted that, according to the United Nations treaty collection website, about 20 States had made reservations to article 4. A wide spectrum of States had made reservations, including the United States. Where freedom of expression intersected with anti-discrimination laws there were some difficult issues; however, the United States would accept no obligation that would limit the fundamental freedoms protected in its Constitution. For example, the United States had allowed a controversial march by the Nazi party in a largely Jewish neighbourhood and had also protected the right of others to protest against the march. The representative emphasized that reservations to conventions were generally allowed. On the purpose of the Ad Hoc Committee, the representative emphasized that Human Rights Council decision 3/103, in which the Council had requested the Committee to develop a new treaty, had been adopted by a vote, not by consensus. Also, paragraph 199 of the Durban Programme of Action did not call for a new treaty; instead, the language was "prepare complementary international standards", which did not prescribe the type of document. There was merit in the Ad Hoc Committee's work to address any gaps, but the Committee was not asked by the Durban Declaration and Programme of Action for a new treaty or protocol, but rather complementary standards, which might take other forms. In its more recent consensus resolutions, such as 21/30, the Council referred to paragraph 199 of the Durban Programme of Action, underlining the need for complementary standards. The United States did not see the need for a new legally binding instrument; however, it did see the possible need for other complementary standards, and was ready to discuss forms of standards that could improve protection in those areas.

89. The representative of Brazil noted that, following the presentations during the session, the Committee had a lot of information with which to move forward. In his briefing on procedural gaps, Mr. Kemal had stressed the importance of strengthening the implementation of the Convention by addressing procedural gaps through, for example, an optional protocol to the Convention allowing for country visits. The representative emphasized that that issue had been raised with the Ad Hoc Committee on a number of occasions by the Committee on the Elimination of Racial Discrimination and that it was time for the Ad Hoc Committee to take action on the issue in order to have an impact.

90. The representative of Pakistan, on behalf of OIC, welcomed the suggestion that it was time for the Ad Hoc Committee to take the recommendation of the Committee on the Elimination of Racial Discrimination forward and consider an optional protocol to the Convention on procedural gaps. She also welcomed the position of the representative of the United States that it was time to discuss forms of complementary standards. Pakistan underlined that the general recommendations of the Committee on the Elimination of Racial Discrimination, in which the Committee considered substantive gaps, were not considered as legally binding but rather as guidance, and complementary standards could take the issues addressed in general recommendations and include them in an optional protocol. The representative recommended that, during its next session, the Ad Hoc Committee spend time exploring (a) forms of complementary standards; (b) an optional protocol to the Convention to address procedural gaps; and (c) an optional protocol to the Convention to address substantive gaps, following issues referred to in general recommendations of the Committee on the Elimination of Racial Discrimination.

91. The representative of Chile said that Chile was in favour of any proposal to advance the work of the Ad Hoc Committee, and supported the earlier intervention of the representative of Brazil.

92. The representative of South Africa, on behalf of the African Group, reiterated the position that reservations to articles 2, 4 and 14 of the Convention created gaps and should be addressed. She proposed that the Committee on the Elimination of Racial Discrimination

should be invited to provide information on reservations and how they affect the implementation of the Convention. The representative emphasized that the Convention was a living document with 35 related general recommendations, which illustrated that there were substantive gaps in the Convention. The Ad Hoc Committee should consider the substantive gaps at its next session. It should also consider the core elements of the procedural gaps to the Convention highlighted by the Committee on the Elimination of Racial Discrimination with regard to monitoring and country visits; also, the Committee should be asked to make a presentation on that issue at the next session of the Ad Hoc Committee. The representative also suggested proposing that OHCHR be invited to make a presentation at the seventh session of the Ad Hoc Committee on comparative analysis of treaty body mechanisms and how the International Convention on the Elimination of All Forms of Racial Discrimination procedures differed, so the gaps could be addressed.

93. The representative of the European Union reiterated that the European Union was committed to a discussion on potential gaps and to finding constructive ways to implement what already existed to address racism. Since the establishment of the Ad Hoc Committee, much progress had been made in the European Union at the national and regional levels, and European Union legislation had been developed which in some cases went beyond the United Nations framework. When the working methods of the Ad Hoc Committee had been discussed, representatives of the European Union had emphasized the need to move forward on the basis of facts, not aspirations. Future work on identifying any gaps must be based on analysis and facts. Complementary standards did not need to be an optional protocol or a new convention; they could also be new guidelines, best practices and general recommendations of the Committee on the Elimination of Racial Discrimination. The representative requested facts on substantive gaps that could not be addressed by the Convention, stating that members of the Committee on the Elimination of Racial Discrimination had repeatedly noted the Committee's regret that States were not fulfilling reporting and implementation obligations as they should.

94. The Chairperson-Rapporteur concluded the meeting, noting that there were different perceptions: that considering complementary standards involved looking at additional protocols or conventions and that legal standards could be, inter alia, best practices and guidelines. In presentations and reports, the Committee on the Elimination of Racial Discrimination had asked countries to review their reservations, so there were clearly issues concerning both reservations and reporting, areas that could improve enforcement of Convention provisions. Another remaining consideration was that of interpretation or judgement based on fact. States would not have to agree with a new legal standard, as they had the prerogative to consider ratifying the instrument.

95. The meeting was adjourned to allow regional coordinators to consider the proposals made and in which areas conclusions and recommendations could be reached at the sixth session, and to make proposals concerning the level of consensus and agreement.

IV. Adoption of the report

96. The Chairperson-Rapporteur opened the 15th meeting on the morning of 17 October. The meeting was adjourned to allow the Committee additional time to continue its informal discussions, with a view to arriving at agreement.

97. The meeting was resumed later that afternoon. Further to the informal discussions, the Ad Hoc Committee agreed that the following topics would be discussed at the seventh session of the Committee:

(a) Issues related to the implementation of the Convention:

(i) Universal accession to or ratification of the Convention;

(ii) Analysis of the number, range and basis of reservations to various articles and their implications; assessment of the use of the complaint mechanism under article 14;

(iii) Issues, challenges and best practices pertaining to reporting under the Convention;

(iv) Implementation of recommendations to States;

(b) Procedural gaps with regard to the Convention:

(i) Further elaboration of the views of the Committee on the Elimination of Racial Discrimination on key elements with regard to procedural gaps and best ways to address them (follow-up to the 2007 study and the different presentations given and proposals made to the Ad Hoc Committee in accordance with its mandate);

(ii) Presentation by OHCHR: comparison of relevant procedures of other treaties;

(c) National, regional and subregional mechanisms:

(i) Panel discussion to provide a comparative perspective on national, regional and subregional mechanisms;

(d) Presentation and discussion on the purpose of general recommendations by the Committee on the Elimination of Racial Discrimination and the process leading to their issuance in the context of the effective implementation of the Convention, and any possible shortcomings;

(e) General discussions with one or more members of the Committee on the Elimination of Racial Discrimination.

98. The Ad Hoc Committee agreed on the following general conclusions on racism and sport:

(a) Racism, racial discrimination, xenophobia and related intolerance are increasing across the globe. Virulent manifestations of these scourges have also been observed and documented in and around the world of sport, including on football pitches in every region;

(b) Football is a prominent sport with global reach, with the capacity to draw massive audiences, and creates a great impression on millions of people in all regions of the world;

(c) International football federations and national football associations are aware of the problems of racial discrimination in the sport and are undertaking efforts to combat this scourge;

(d) Sport, and in particular football, can be used to amplify anti-discrimination messages and support the primary efforts of Governments and civil society against racism;

(e) The Ad Hoc Committee encourages the Human Rights Council to invite OHCHR, in particular the Anti-Discrimination Section, to continue to prioritize issues of racism in sport, with an emphasis on football, in its work. In that regard, the Committee believes that resources should be made available to OHCHR to carry out activities pertaining to racism and sport.

99. Also at the 15th meeting, the report of the sixth session was adopted *ad referendum*, with the understanding that delegations would forward technical corrections to their

interventions, in writing, to the secretariat by 31 October 2014. The Chairperson-Rapporteur invited general statements from the participants.

100. The representative of Pakistan, on behalf of OIC, thanked Chairperson-Rapporteur for his excellent leadership and guidance during the session.

101. The representative of South Africa, on behalf of the African Group, thanked the Chairperson-Rapporteur for his leadership and expressed recognition of the progress that had been made and of the improved constructive atmosphere of the sixth session. She recalled that the mandate of the Ad Hoc Committee should be guided by paragraph 199 of the Durban Programme of Action and Human Rights Council decision 3/103 and resolution 10/30, and restated the view of the African Group that such guidance should be the focus of the Committee when undertaking its work.

102. The representative of the European Union thanked the Chairperson-Rapporteur for contributing to a constructive atmosphere and a rich exchange of views, adding that the Chairperson-Rapporteur's long-standing experience had assisted the Committee in finding common ground for the way forward. With regard to the two new topics considered during the session with respect to prevention and awareness-raising and to special measures, the European Union was of the view that they had been thoroughly addressed by the invited experts, none of whom had indicated that there was any particular area that was not covered by the current international legal framework to fight racism and tackle related issues. On the topic of xenophobia, she underlined that it was being combated through different anti-discrimination measures on various grounds, and that the European Union remained of the view that there was no added value in the Committee working on a legal definition of that phenomenon. As to the topic of national mechanisms, the need persisted to further explore the potential of such mechanisms to improve the implementation of existing international standards, which would ensure their effectiveness. On the issue of procedural gaps, the representative underlined that, as a starting point, the Committee on the Elimination of Racial Discrimination was able to carry out its work effectively within existing procedures. The level of cooperation by States parties was not always satisfactory, which was why the implementation of the existing procedures should be improved in the first place. The representative also suggested that the Ad Hoc Committee provide its considerations to the Human Rights Council on the issue of the duration of the meeting time allocated to the Committee. Looking forward to the next session, the representative said that the work of the Committee would benefit from considering those consensual topics, during which States across regions could share their experiences in implementing existing norms and standards.

103. The representative of China expressed appreciation for the wisdom of the Chairperson-Rapporteur and paid tribute to all colleagues in the Ad Hoc Committee and the secretariat for their hard work during the previous two weeks. The delegate noted that racism was a serious violation of human rights and that the international community was witnessing serious and worsening racism, racial discrimination, xenophobia and related intolerance. The international community should uphold the international framework aimed at combating racism and, therefore, demonstrable political will should be attached to the Durban Declaration and Programme of Action and the outcome of the Durban Review Conference. It was important to promote harmony and co-existence among different races and societies of the world. In so doing, the elaboration of new complementary standards to address contemporary forms of racism, racial discrimination, xenophobia and related intolerance should take place. The Ad Hoc Committee was urged to achieve tangible results to that end.

104. The representative of Brazil thanked the Chairperson-Rapporteur for his role in helping the Ad Hoc Committee to find consensus in adopting the conclusions of the session. She expressed optimism about the focus of the Ad Hoc Committee and that its

future work would fulfil the mandate given to it by the Human Rights Council. She particularly welcomed the conclusions and the proposal for future discussions on the issue of procedural gaps with respect to the Convention.

105. The representative of the United States also thanked the Chairperson-Rapporteur for the spirit and guidance he had brought to the sixth session of the Ad Hoc Committee, and expressed appreciation to all colleagues for their efforts to reach consensus during the session.

106. In closing the meeting, the Chairperson-Rapporteur thanked participants for their statements of appreciation to him, noting that the progress made during the session was a result of the hard work of delegations.

Annexes

[English only]

Annex I

Summaries of the expert presentations and initial discussions on the agenda topics

A. Summary of the expert presentations and initial discussions on the topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance"

1. At the 2nd meeting on 7 October 2014, the Ad Hoc Committee on the Elaboration of Complementary Standards heard presentations given by Mr. Patrick Gasser, Senior FSR Manager at Union of European Football Associations (UEFA), Mr. Jonas Burgheim, Deputy Head of the United Nations Office on Sport for Development and Peace (UNOSDP), and Mr. Pavel Klymenko, a representative of the Football Associations against Racism in Europe (FARE Network) on "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance" as it related to sport.

2. Mr. Patrick Gasser presented on UEFA's role in the area of racism in sport, stating that football provided a unique platform to address that issue. UEFA was active in anti-racism initiatives in football. It had established a set of sanctions for disciplinary controls, it organized Football Action week every October during Day 3 of the UEFA Champions League and had just held a "Respect Diversity" conference in Rome in September 2014. Its' "No to Racism" campaign included education, campaigning and sanctions. He noted that UEFA's anti-discrimination campaign comprised 54 Euro 2016 qualifiers (national team's competition), 40 games of the Champions League and Europa League (club competition). The following actions took place during those matches: "No to Racism" campaign via announcements on stadium speakers; graphics on giant screens; the broadcasting of television advertisements; messages in match programmes and kids-players escort initiative. In addition, UEFA pursued a number of educational programmes, such as seminars on institutional discrimination, the Captains for Change Initiative and the Women in Football Leadership Programme.

3. UEFA noted that it tackled all forms of discrimination, including racism, gender discrimination and homophobia. While its jurisdiction was currently limited to UEFA-sponsored events, such as Champions League matches, UEFA also worked at influencing national associations. An important part of UEFA's national approach was the cooperation between the UEFA's control and disciplinary body and the FARE Network in order to monitor football matches and report discriminatory behaviour.

4. Mr. Jonas Burgheim, introduced the work of the Special Adviser on Sport for Development and Peace and the United Nations Office on Sport for Development and Peace and the work of the Intergovernmental Working Group in the area of sport, peace and development. The Group's main activities were the promotion and support of (national) policies and projects as well as policy work in cooperation with UN partners, with reference

to GA resolution A/RES/67/17. He noted that the Human Rights Council had become increasingly active in the field of human rights and sport, noting resolutions A/HRC/RES/13/27, adopted in 2010, A/HRC/RES/26/18 and A/HRC/27/L.14 both adopted in 2014 in that regard. Mr. Burgheim explained that UNOSDP worked with a number of different actors ranging from governments to other United Nations entities to sport federations. The Office was active in policy formulation and was implementing concrete projects under its mandate. UNOSDP was involved in the drafting process of the relevant General Assembly resolutions, and had intervened from time to time to resolve emblematic cases concerning discrimination in sport, notably a recent case concerning the wearing of the head scarf during a women's basketball games. Mr. Burgheim underlined the importance of sport in the area of anti-discrimination, noting that sport was a powerful tool to strengthen social ties and networks, and promote ideals of peace, fraternity, solidarity, non-violence, non-discrimination, tolerance and justice. Sport was a global phenomenon, which had a strong convening power and enjoyed wide-spread popularity, especially among youth. He offered the support of the Office on Sport for Development and Peace and provision of relevant expertise to the Ad Hoc Committee.

5. Mr. Pavel Klymenko, FARE Network, briefed delegates about the work of the network concerning racism and xenophobia in sport, especially football. The FARE network membership, though primarily European, was also growing on a global scale. FARE was currently active in more than forty countries and cooperated with UEFA, FIFA, CONCACAF and others. Among the major issues in football that were addressed by FARE were: the re-emergence of far-right parties and extremist movements in Europe; the continued abuse of ethnic minorities; escalating xenophobia and extremist symbolism at matches; the existence of glass ceilings for minorities in sports administration and coaching; and the fact that national bodies and Governments were slow to respond to such problems. He explained that stronger sanctions from responsible sport associations, as well as national authorities were important to combat racism and xenophobia in sport. It was important that UEFA disciplinary bodies be informed, following an analysis of the probability of risk at certain matches and that independent monitoring of these matches take place. He added that FARE assisted with the collection of data, carrying out a preventative prognostic function.

6. Mr. Klymenko stated that strong leadership was necessary, as there was an obvious need to broaden diversity in sport, in cooperation with affected communities. He added that the system of data collection undertaken by FARE Network allows for prevention, and could be replicated at the national level. It was also important to ensure that legal frameworks were consistent at the national level, as such commonly-agreed principles to assist in addressing discriminatory incidents in sport at the international level could be useful. The cooperation between police forces and sport organizers was critical. In addition, the expert suggested that anti-discrimination campaigns needed to be supported by countries and public authorities should engage with fans and victims.

7. The representative of Morocco while noting that football was at the forefront in addressing discrimination in that sport, inquired about anti-discrimination initiatives in other sports and other regions and whether it would be possible to build on the initiatives taking place in Europe. The European Union welcomed the expert discussion of practical initiatives taking place to combat racism in sport. It also inquired whether there were attempts to expand these initiatives to other regions and other sports, and also asked about other forms of discrimination, such as discrimination against women and persons with disabilities, asking about examples of efficient approaches. It noted that an increased partnership between UN organizations and sport federations was essential to combat discrimination. The Human Rights Council should play a role in that regard. Some sport associations, such as the International Olympic Committee, that had UN observer status,

were very active, but, the potential for close cooperation was largely I untapped and remained to be utilized.

8. Mr. Burgheim and Mr. Gasser noted that in addition to football, other sport federations were becoming engaged in the fight against discrimination. With regard to the global coverage of football and racism issues, it was recalled that FIFA was invited to present to the Ad Hoc Committee, but was unable to participate on this occasion due to scheduling constraints. Mr. Klymenko noted that similar problems in other sports such as basketball, cricket and rugby had triggered some responses in other regions, like North America, Latin America and Asia. He told the Committee that Australian sport associations had, for example, developed frameworks for fighting discrimination, in particular homophobia, in team sports. Football associations in other regions were undertaking similar actions such as the independent monitoring used by the FARE network and that the network was open to assisting other regions, if requested. Nevertheless, he added, clearly not all stakeholders were engaged in the fight against racism.

9. The representative of Uruguay noted that racism and violence existed in football in Uruguay, mostly at the club level and noted a chain of responsibilities, which included the need to enhance the awareness of national federations.

10. The representative of the Republic of South Africa asked the experts to comment on the role of sport in healing, remembrance and reconciliation, with regard to racism. Mr. Burgheim recalled that dual aspects and values of sport were reflected in para. 86 and 218 of the DDPA, and noted that the symbolism and practice of sport could have a strong impact on reconciliation. Mr. Gasser noted that UEFA actively pursued reconciliation projects for example, in Eastern Europe or in the Middle East. In his view, the goal is to "wave a new social fabric for the next generation". Mr. Gasser explained that UEFA jurisdiction and its rules and regulations applied to UEFA competitions, and not national leagues, which complicated addressing national instances of racism in football. He did however; note some good practice examples that could share with the organizers of national competitions and national associations. He stated that improved cooperation was required on this and that UEFA was pleased to share its good practices, if asked. He added that UEFA was also involved in sponsoring tobacco-free matches, and public health issues such as childhood obesity.

11. In response to the questions, Mr. Gasser also noted that while racism was a very key component, the UEFA respect diversity approach set a wider consideration than race, as the organization was against any form of discrimination. Both he and Mr. Burgheim also stressed the need to involve local actors and stakeholders in anti-discrimination initiatives, underlining the very important local partnerships with organizations like FARE Network. Mr. Klymenko agreed that it was essential to reach out to all stakeholders involved in sports in order to involve them in anti-discrimination initiatives.

12. A representative of the International Basketball Federation (IBF) stated that perhaps there was no racism per se in sport, as rather sport offered a platform for sentiments which already existed in different societies. While noting the important role to be played by sports federations, such as IBF, he underlined the fact that it was for Member Stares to have regulations in place to prohibit and punish racism.

13. The experts agreed that while sport indeed mirrored society, racism was also present in the sport itself. Large sporting events, unfortunately, could provide giant venues for discrimination, underlining the importance of using these very same venues to combat discrimination through anti-discrimination campaigns and messages. Mr. Gasser explained that the effect of sport as an "opinion maker" could be assessed by the fact that advertisement time during prominent sport events, such as the Champions League matches, sold for millions of Euros.

14. The Chairperson-Rapporteur inquired as to why despite the practical measures being undertaken in the arena of sport, racist and xenophobic incidents continued to occur; whether it was possible to link issues of awareness-raising to penalties in the initiatives being considered and carried out; and whether contexts like the media or political discourse could provoke these sentiments and violence at sports events. The Chairperson-Rapporteur also asked about whether the experts were involved in the FIFA "good behaviour barometer" and whether they had any comments on its scientific basis and effectiveness. Mr. Gasser replied that according to its own statistics, the number of incidents had increased, however this was a good sign as it meant that monitoring and tracking, in partnership with FARE Network were now more effective and that over time with the efforts undertaken, these figures would start to decrease. He cautioned that there was a limit to what could be asked of federations, as efforts against racism could backfire and fail. Football could not create peace; rather, the primary role was for Governments; federations, national associations and civil society were stakeholders who could assist within their jurisdictions and means. All society must contribute, and success could only come from interplay among all actors. Mr. Klymenko added that as civil society and governing bodies were making some good progress, the actions of football bodies now needed to be matched by the Governments and the United Nations,.

15. At the 3rd meeting on 8 October, the Chairperson of the Working Group of Experts on People of African Descent (WGEPAD), Ms. Mireille Fanon-Mendes France, presented on the topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance." She pointed out that several human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Rights of the Child (CRC) and mechanisms such as the Special Rapporteur on Education pointed to the importance of education as a commodity and service to achieve other aims. She indicated Declarations such as the International Decade for Education in the field of human rights proclaimed in 1994 by the General Assembly; the guidelines for national education plans on human rights adopted by the General Assembly in 1996 and proclamation of the "World education program in the field of human rights". Despite such efforts by the international community, she pointed out that education was increasingly being commercialized and driven by the market economy, leading to the creation of social hierarchy.

16. Ms. Fanon-Mendes France provided an overview of the situation of human rights education in France and stated that while vocational training was being promoted and integrated into the business sector, it had left out important elements of human rights education "directed to the full development of the human personality and the sense of dignity" and "for anyone able to play a useful role in a free society" as stipulated in the major human rights conventions. Rather, education and training was seen primarily as a productive investment for businesses. She added that the results were overwhelming elsewhere as well: in Africa, human rights was not a part of the curricula in many countries; in both Europe and the Americas, very few countries had developed action plans in the area of human rights education; and in the Asia and the Pacific, only two countries had developed plans of action in the area. She listed a number of reasons behind the challenge in promoting human rights education such as the lack of political will of States, the lack of resources and specialists in this field, as well as prevailing political instability, corruption, endemic poverty and illiteracy in different countries.

17. Ms. Fanon-Mendes France also described the detrimental impact of racism on the promotion of human rights education, impinging upon universal values of non-discrimination. She gave a number of contemporary examples in French society that pointed to the need to increase awareness-raising not only for children, but adults as well as people from all walks of life, on the importance of receiving human rights education. Given

the historical impact of racism, Ms. Fanon-Mendes France suggested that deconstructing the notion of racism was key to addressing the persistence of inequality and domination related to racial distinctions in pluralistic contemporary societies. In this context, she also suggested that the international community had an important opportunity during the International Decade for People of African Descent to promote human rights education, including through awareness-raising activities to prevent and combat racism, racial discrimination, xenophobia and related intolerance.

18. The delegate of Morocco asked if the construction of memorials could serve as a vector to combat racial discrimination, and asked if education on human trafficking could be seen as an example of a preventive approach. The representative also asked about preventive measures to combat xenophobia. The representative of the European Union delivered a statement strongly condemning all forms of racism, racial discrimination, xenophobia and related intolerance and added that comprehensive legislation had been in place in the EU since 2000 which covered areas such as education, employment, housing, etc. It also protected people of African descent as well as individuals from direct and indirect forms of discrimination. The representative asked the presenter to assess the possibility of attaining progress and tangible results in the promotion of human rights education as part of the upcoming Decade.

19. The representative of Switzerland (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Japan, Mexico, Switzerland and Uruguay) stated that human rights education played a vital role in combating racism, racial discrimination, xenophobia and related intolerance. These delegations shared the view that the World Programme for Human Rights Education and the United Nations Declaration on Human Rights Education and Training, adopted in December 2011, provided a common framework for action for all relevant actors. It hoped that States would further develop their national action plans and initiatives in this area in order to raise the awareness of the public and shift society toward a more tolerant and respectful one. Schools, especially primary school, are the perfect place to start efforts. As called for by the Durban Declaration and Programme of Action and the outcome documents of the Durban Review Conference, States should be encouraged to take action in keeping with the World Programme for Human Rights Education and the UN Declaration.

20. The delegate of Switzerland asked for the presenters' views on the relationship between existing instruments, and the World Programme for Human Rights Education and whether there was a need for complementary standards. The representative of South Africa said that Paragraph 199 of the DDPA had already identified that there are gaps in the current instruments and asked the presenter for relevant recommendations related to elaborating instruments on prevention and human rights education. The representative of Cuba asked the presenter about ways to ensure increased prevention and awareness-raising on the subject and asked Ms. Fanon-Mendes France about the identification of gaps in the subject area. The representative of the USA stated that while the United States had made strides in combating racial discrimination, the example of the Trayvon Martin incident showed that more work needed to be done. While action needed to be undertaken to address gaps with respect to xenophobia at the international level, new treaties or modifications to existing treaties, were not required. The representative asked the expert if the existing tools were effective and adequate.

21. In response, Ms. Fanon-Mendes France said that it was crucial that the world community viewed the legacy of racism as a shared history not just limited to people of African descent. She noted that it was important effectively to enforce existing international laws and standards. She added that some of the issues which she felt were important to be elaborated upon further included the intersectionality of racial discrimination, xenophobia, the definition of Afrophobia and the phenomenon of racial profiling. All these areas

required further definitions clarity and laws relating to these issues needed to be less vague and more enforceable, she added. Besides these three issues, it was important to address the prevalence of structural racism, in order to reconcile the divisive gap between laws and practices. The representatives of the Republic of South Africa, Brazil and Uruguay expressed appreciation that the presenter had identified the issue of intersectionality in terms of combating racial discrimination.

22. In concluding the 3rd meeting, the Chairperson-Rapporteur said that Committee members thought that the ICERD was not sufficient to address the issue of xenophobia and therefore new standards were required, while others thought that the implementation of existing standards were sufficient to address xenophobia.

23. At the 4th meeting, Mr. Karel Fracapane, of the Section of Health and Global Citizen Education, Education Sector, at UNESCO briefed the Committee on UNESCO's work in the area of "Prevention of awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, and xenophobia and related intolerance." At UNESCO, he noted that human rights education (HRE) had a vital role in undermining prejudice, shaping attitudes and behaviours of tolerance, and cultivating respect for human rights of all people. He referred to the 1974 Recommendation concerning Education for International Understanding, Cooperation, Peace and Education relating to Human Rights and Fundamental Freedoms, which provided a normative framework for promoting values and principles of human rights in and through education. Member States were invited to report regularly on the implementation of the Recommendation. The 5th consolidated report on the implementation of the Recommendation had been submitted to the General Conference of UNESCO in 2013, and provided a vast overview of how themes and issues such as tolerance, women's rights, child protection, indigenous people's rights, social justice, violence at school, prevention of racism, discrimination and xenophobia, sexuality and health education, gender equality, etc. were addressed in the formal and non-formal educational sectors of the 55 reporting countries, as well as the challenges faced in their national contexts. He added that UNESCO and the OHCHR had jointly developed a self-assessment tool to help countries build their national plans of action on human rights education.

24. Mr. Fracapane explained that UNESCO had also developed a programme on global citizenship education (GCE), which included human rights education. GCE could be delivered through various modes and in all venues, including formal, non-formal and informal education, noting that in most countries, the formal education system would be the main mode of delivery. GCE should be integrated in education systems, either as a stand-alone subject, or as a component of existing programmes and/or the ethos of a learning environment and system.

25. He explained that the UNESCO project Teaching Respect for All (TRA) could be interesting to the Committee's work, as it was the project that created a set of guidelines to counter discrimination. Countries could adapt the content according to their contexts and needs. The project led to the elaboration of educational materials to address challenges such as racism, ethnic discrimination, xenophobia and prejudice based on gender, colour, descent or national, ethnic or religious identities.

26. Mr. Fracapane stated that an integral part of the human rights education work at UNESCO concerned Holocaust remembrance, and he outlined the features of the Education for Holocaust Remembrance project. He explained that UNESCO aimed at making the study of the past and the commemoration of victims meaningful to present generations. He stated that education about the Holocaust, genocide, and mass atrocity presented a good starting point for raising awareness about processes leading to violent conflicts. Analysing past and present examples of mass atrocities, Mr. Fracapane noted, would help raise awareness about the need to promote, preserve and nurture the fundamental rights of

individuals. The Education for Holocaust Remembrance project was established to educate about the Holocaust and also combat Holocaust denial. It involved the commemoration of the International Day in Memory of the Victims of the Holocaust on 27 January each year, as well as educational modules for ministries of educations around the world. It also aims to sensitize States and the general public on Holocaust remembrance and genocide prevention.

27. During the following discussion, the representative of Morocco underlined the importance of education and in particular human rights education. Answering a question posed by Morocco and Brazil, Mr. Fracapane noted that the Teaching Respect for All programme had now reached the end of its pilot phase, and that there were plans to expand the programme to a global level.

28. The representative of the USA inquired about the scope of the programme. Mr. Fracapane explained that the programme addressed various forms of discrimination and could be adapted to a local context – depending on which form of discrimination was dealt with. The programme per se covered among others racism, gender equality, homophobia or discrimination against handicapped people. Different countries made different uses of the programme.

29. Morocco inquired about the distinguishing characteristics of the Global Citizenship Education. Mr. Fracapane explained that the GCE methodology encompassed human rights education but had a broader focus. Global citizenship meant addressing a number of different areas that could not be separated of which a global citizen needed to be aware. Consequently, the programme encompassed sustainable development, health, education, human rights and other areas. The GCE initiative served as an umbrella under which all of those areas came together. The initiative also corresponded to a shift away from purely cognitive education.

30. The representative of Morocco noted the role of memorial processes and asked if UNESCO dealt with other atrocities, such as Rwanda or Srebrenica. Mr. Fracapane stated that the Holocaust was an important starting point to begin a discussion of "where discrimination can lead." Indeed, all instruments to prevent genocide were based on the Holocaust experience. The Holocaust was the universal example of a mass atrocity, and it was also a practical example, as there was a lot of material from which teachers could draw. The UNESCO expert stressed that there was an obvious link between different crimes against humanity. It was important to focus on "the drama of history" rather than one event. The Holocaust could also be used in order to grapple with a country's own history. He explained that Argentina, for example, had reformed school curricula and started to teach about the Holocaust, which allowed teachers to talk about the years spent under the rule of the military regime. Argentina was now proceeding to work on the issue of including crimes against indigenous populations in the curriculum. That was a practical example of how a country can tackle its own history by learning about the history of others.

31. The Chairperson-Rapporteur recalled that UNESCO was pioneering work on human rights education, in particular in the field of anti-racism, from the 1960s. A number of publications had been produced at that time which underlined one human race. The Chairperson-Rapporteur asked Mr. Fracapane to inquire with UNESCO headquarters if the impact of those various educational tools produced by UNESCO had been assessed. It would be important for the Committee to know which educational tools had been successful in the past, and which had failed in order not to repeat mistakes, but build on the achievements.

32. The Republic of South Africa noted that education was essential to anti-discrimination work and also stated that it was crucial to recognize the importance of the past. Three Holocaust memorials existed in South Africa, which were used for teaching purposes and served as a constant warning that silence (while someone was experiencing

discrimination) could result in disaster. The representative urged the Committee to take the side of the victims and recalled that during the morning's session, five additional protocols were discussed. The UNESCO expert was asked if Mr. Fracapane would be able to make any recommendations regarding the gaps in anti-racism law that could be addressed by the Committee.

33. The representative of the United States of America added that he would appreciate recommendations from the expert but did not agree with the South African position that there were gaps in the law. The UNESCO expert replied that, in his view, there was no need for new laws; as such laws were already in place. Countries were asked to report on the implementation of existing laws and it had become clear that there was a gap between the legal framework and the actual practice on the ground. The expert recommended that countries and stakeholders engage with UN system and agencies more intensively in order to develop programmes and ensure the implementation of the legal framework at all levels.

34. In response to the question of South Africa, Mr. Fracapane noted that discrimination resulted from a variety of factors. There was; however, a real gap between the legal framework and its implementation. One of the reasons was a lack of capacity and capacity-building measures, and a lack of focus by the international community. Regional and local communities, needed to participate in capacity-building – in particular when it came to human rights education. An important factor for future success would be to address informal education.

B. Summary of the expert presentations and initial discussions on the topic of "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance"

35. In the afternoon of 9 October, the Ad Hoc Committee commenced a discussion on the topic of "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance". This 6th meeting was chaired, exceptionally, by Mr. Ephrem B. Hidug of the Permanent Mission of Ethiopia to the United Nations Office at Geneva.

36. The presentation by the expert, Mr. Carlos Vazquez, a member of the CERD, was focused on the treatment of "special measures" in the Convention for the Elimination of All Forms of Racial Discrimination, as well as in the practice of the Committee on the Elimination of Racial Discrimination. The Committee's practice is reflected in its Concluding Observations and in its General Recommendation No. 32, on "The meaning and scope of special measures in the Convention on the Elimination of Racial Discrimination." In theory, the Committee might also have occasion to address special measures in individual communications against States parties that have opted into this procedure under article 14 of the Convention. However, to date the Committee has not addressed, in its decisions on individual communications, whether a State's decision to employ special measures, or its failure to do so, amounts to a breach of the Convention.

37. He clarified that the Convention uses the term "special measures" to describe a concept that is sometimes referred to by other terms, such as "affirmative action," "affirmative measures," or "positive measures," however, the meaning of these terms in certain legal systems can be different from the meaning in the Convention. "Special measures" is a broader term that includes, for example, programmes that draw distinctions along racial or ethnic grounds in order to benefit disadvantaged groups, and also

programmes that seek to improve the position of disadvantaged groups by other means. He noted that although the CERD occasionally used these other terms, especially "affirmative action," its preference, for the purpose of clarity, was to apply the wording of the Convention. He added that the one term that the Committee definitively rejected was the term "positive discrimination." This phrase, the Committee has said, is a contradiction in terms, since all racial discrimination is prohibited by the Convention and therefore cannot be "positive." Mr. Vazquez continued that the term "reverse discrimination" is more complicated and should be used cautiously, if at all. A measure pursued by a State party could in theory amount to reverse discrimination – if it failed to satisfy the conditions set forth in the Convention for using special measures. If a measure does satisfy the Convention's conditions, then the measure does not amount to discrimination, and hence is not reverse discrimination.

38. With regard to the text of the Convention, special measures are mentioned in two provisions: article 1, section 4, and article 2, section 2. Article 1 defines racial discrimination, which is prohibited by the Convention, and section 4 makes clear that special measures ordinarily do not constitute prohibited racial discrimination. Specifically, article 1, section 4 provides that "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

39. Article 1, section 4 should be understood as a clarification of the definition of "racial discrimination" in article 1, section 1. Section 1 defines racial discrimination as "distinction[s], exclusion[s], restriction[s] or preference[s] based on race, colour, descent, or national or ethnic origin." Because special measures sometimes take the form of "preferences" based on race or ethnicity, they might be thought to be barred by article 1, section 1. Section 4, however, makes it clear that such preferences are not barred if they are adopted to secure the adequate advancement of groups requiring such protection, and if other conditions are satisfied. One might think that section 4 is an exception to the broad prohibition of racial discrimination. The Committee, however, views section 4 as instead a clarification of the meaning of section 1. Article 1, section 1 does not prohibit all preferences, but only those preferences "which ha[ve] the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." The Committee elaborated on this definition in its General Recommendation 14, in which it observed that "differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate." Article 1, section 4 should be understood to clarify that preferences adopted for the purpose of securing the advancement of disadvantaged groups serve a legitimate purpose, and, if they meet the other conditions set forth in Article 1, section 4, they do not violate the Convention.

40. Mr. Vasquez explained the conditions that determine the validity of special measures. Article 1, section 4 refers to special measures taken for the "sole purpose" of securing the advancement of disadvantaged groups. According to the Committee's General Recommendation 32, the "sole purpose" language "limits the scope of acceptable motivations for special measures within the terms of the Convention." This raises potentially difficult questions when racial preferences are adopted for multiple purposes. For example, in some countries, racial preferences in university admissions are justified on the ground that it is important for the educational mission to expose students to a diverse range of viewpoints. The achievement of diversity would appear to be a motivation distinct

from securing the advancement of disadvantaged groups. Do racial preferences adopted for the purpose of achieving diversity run afoul of the limitations of article 1, section 4, because they are not taken for the "sole purpose" of securing the advancement of disadvantaged groups? The Committee's General Recommendation does not address this point, but the Committee's practice does not suggest that special measures are problematic because they serve this additional purpose. This may be an example of the Committee's interpretation of the Convention as a "living instrument." As measures rarely have a single purpose, a literal approach to the "sole purpose" criterion is therefore unrealistic.

41. Article 1, section 4 also provides that special measures must be adopted for the purpose of securing "adequate advancement" for disadvantaged groups. The General Recommendation indicates that this term refers to "goal directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination." These include "persistent or structural disparities and de facto inequalities were resulting from" historical circumstances. As there is a danger that communities themselves may not agree that special measures are necessary to secure their advancement, the General Recommendation provides that special measures should be designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities. Special measures should not be imposed on disadvantaged groups against their wishes. He also noted also that Recommendation requires consultation with "affected communities," not just the beneficiaries of the special measures, representatives of races or ethnicities that would not be benefited by the special measure.

42. Article 1, section 4 imposes two additional conditions for the validity of special measures: they must be temporary and not lead to the maintenance of separate rights for different racial groups. This is in contrast to article 2(2) which provides that special measures "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." Article 1(4) imposes two separate requirements – the measures must not maintain separate rights for different racial groups and they must be temporary; article 2(2) imposes one requirement – the wording indicates that measures may establish separate rights for different racial groups as long as they are temporary. The General Recommendation does not discuss the difference in language. In discussing article 1(4), the Recommendation interprets it to impose two separate requirements (that the measures not establish separate rights for different racial groups and that they be temporary). In discussing article 2(2), the Recommendation says that the limitations it imposes are "in essence the same" as those imposed by article 1(4). The General Recommendation does go on to say, however, that the obligation not to maintain special rights for different racial groups in "narrowly drawn" insofar as it refers only to "racial" groups, and thus and calls to mind the practice of Apartheid in South Africa.

43. The General Recommendation draws an important distinction between special measures, which must be temporary, and the permanent rights to which certain minorities might be entitled. For example, minorities have the right to enjoy their own culture, profess and practice their own religion and use their own language, and indigenous peoples have the right to use land traditionally occupied by them. Similarly, women have rights to non-identical treatment based on biological differences, such as maternity leave. These permanent rights should be distinguished from special measures, which are to be used only temporarily. The Recommendation also makes clear that these permanent rights recognized by international human rights law are not "special rights" within the meaning of article 1(4).

44. He noted that CERD practice on special measures has primarily been focused on urging States parties to put such measures in place more frequently. Although the Committee's Concluding Observations have at times expressed concern over special measures that have remained in place longer than necessary, or otherwise raise issues under article 1(4), it is much more common for the Committee to express concern about a State party's failure to take special measures where they seem warranted. And the Committee's Concluding Observations rarely express views about the appropriateness of particular types of special measures as compared to others.

45. Mr. Vazquez summarized the nature of States parties' obligations under the Convention: Article 2(2), as the General Recommendation makes clear, means that it is mandatory – not discretionary – for States parties to employ special measures "when circumstances so warrant." States parties must initially determine whether the circumstances warrant special measures, and this is to be done by assessing whether there is a disparate enjoyment of human rights by persons or groups within the State party on the basis of race, colour, descent, or national or ethnic origin, and an ensuing need to correct such imbalance. This assessment is to be made on the basis of disaggregated data. Once the need for special measures has been determined, the State party must choose among the various types of special measures that might conceivably be employed. This determination must, inevitably, be sensitive to the particular situation of the various racial and ethnic groups in the State party, and must be done in consultation with such groups and other "affected parties." As the General Recommendation notes, the Convention must be interpreted in a context-sensitive manner, and "context-sensitive interpretation . . . includes taking into account the particular circumstances of States parties without prejudice to the universal quality of the norms of the Convention." The Committee recognizes that "[t]he nature of the Convention and the broad scope of the Convention's provisions imply that . . . the conscientious application of Convention principles will produce variations in outcome among States parties," although it has also stressed that "such variations must be fully justifiable in light of the principles of the Convention." In the end, the selection of special measures inevitably requires sensitive judgments by the State parties, but these judgments are to be exercised within the parameters and in compliance with the requirements of the Convention, as elaborated in General Recommendation 32.

46. Brazil speaking (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Mexico, Switzerland and Uruguay) stated that special measures, including affirmative or positive action, can be an important tool to prevent and eliminate racism, racial discrimination, xenophobia and related intolerance. The importance of special measures, and its framework, can be found in both the ICERD, in its articles 1(4) and 2, and in the DDPA and in the outcome of its Review Conference. The DDPA recognizes the necessity for special measures or positive actions for the victims of racism, racial discrimination, xenophobia and related intolerance in order to promote their full integration into society. Those measures for effective action, including social measures, should aim at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing. Therefore, special measures and affirmative action can not only have corrective functions, but also an important preventive role. The delegation asked Mr. Vazquez whether he considered that there are gaps in the international framework that would require additional international norms on special measures, and invited him to share good practices in the area.

47. Mr. Hidug, in his role as Chairperson-Rapporteur, asked for Mr. Vazquez's views on why, given the mandatory nature of article 2(2) of the ICERD, it was only being implemented by some countries.

48. Mr. Vazquez expressed his agreement at the preventative, as well as corrective, function of special measures. He explained that the Committee considers that CERD is flexible enough to address any gaps in the international framework, and therefore a new instrument on standard on special measures, was not really needed. The Convention was detailed enough in its provisions for special measures and the Committee has developed further guidance through General Recommendation 32, which is sufficient. Special measures are context specific and it is difficult to provide more detailed guidance than that provided in General Recommendation 32. The CERD could, if required, revisit the recommendation to add further details in the future.

49. In his personal view, a survey of the special measures undertaken by states around the world could be interesting. He stated that a significant number of States had taken special measures in different contexts such as in the area of employment, election to political office etc., adding that it was inaccurate to state that few States had implemented them. Although States report to CERD on special measures, due to word limit of the periodic report it was not possible to provide a lot of detail on special measures taken. Information about the type, context and nature of measures, would allow the Committee to analyse and compile best practices and provide States with further guidance on what available options and novel approaches which had not occurred to them.

50. The delegate of Mexico recalled that legislative measures were undertaken as part of national reforms in June 2014, including exclusion, inclusion and positive measures. The measures addressed physical access and communication barriers, and awareness-raising activities and training. Mexico is also taking steps to remove barriers through the distribution of documents in indigenous languages, and there is a policy to combat discrimination such as in the area of homophobia. Special temporary measures have been introduced for groups that face discrimination, particularly people of African descent and indigenous peoples. National councils to prevent discrimination are tasked with gathering information about the work of different institutions in this area.

51. The European Union underlined that ICERD is an important instrument and it reiterated its concern at delays in reporting under the Convention. The delegate inquired about how many states have recognized the communications procedure of CERD under article 14, and inquired whether any new General Recommendations were planned by CERD.

52. Mr. Vazquez appreciated the information provided about the new legislation in Mexico and the areas where action was being taken to ensure disadvantaged communities are not left behind. With regard to inclusion measures, he distinguished between permanent rights held by groups and special temporary measures. He added that special measures are dealt with by other committees and other conventions, and in those contexts special measures may take different forms.

53. In response to the EU, he noted that reporting in some cases is delayed and measures are being taken to address this. Regarding the number of States which have opted into the communications procedure there are approximately 55 states, which is a third of States parties and he encouraged more States to join. General Recommendation 35 on combatting racial hate speech was adopted and released in August 2013. During the April session in 2015, CERD will consider new topics for General Recommendations. CERD is in the process of looking at working methods with an aim to harmonize these with those of other treaty bodies and one of the areas to be harmonized concerns the adoption of General Recommendations.

54. Mexico provided clarification on its previous intervention regarding law reform and special measures. Only the last measure mentioned in her intervention is a temporary special measure.

55. At the 7th meeting on 10 October, Mr. Theodore Shaw, Professor and Director of the Center for Civil Rights of the Chapel Hill School of Law, University of North Carolina presented on the topic: Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance. Mr. Shaw provided some historical context and background to the issue recalling to the transatlantic slave trade and subsequent slavery in the USA, as well as the "Jim Crow" legal era which continued to exist in many parts of the country until the 1960s. He said that affirmative action began in the 1960s as a remedial imperative to address the effects of 350 years of segregation and slavery which had to be viewed as a continuum.

56. He also said that since its introduction in the United States, affirmative action in the education sector had faced repeated backlash in the form of lawsuits alleging "reverse discrimination". He cited the example of the case of *DeFunis v. Odegaard* (1974) concerning Marco DeFunis, an applicant to the University of Washington Law School, who alleged that he was discriminated against when he was not admitted although black and Latino minority group members had been accepted into the university. The case was ultimately found to be moot in 1974, as DeFunis had been provisionally admitted while the case was pending. He also gave the example of the *Board of Regents of the University of California v. Bakke* (1978), in which Mr. Bakke, an applicant to medical school had been rejected, while applicants from minority groups had been accepted. This landmark decision by the Supreme Court of the US upheld affirmative action but ruled that specific quotas were impermissible. More recently,, in 2003 the United States Supreme Court dealt with the case of *Grutter v. Bollinger* in which it also upheld the affirmative action policy of the University of Michigan Mr. Shaw added that in the United States these decisions were taken on the basis of a diversity rationale, rather than a remedial rationale. He provided different examples of the challenges in implementing affirmative action in the employment sector and stated that while the aim had been to achieve a country in which race did not subordinate people; there has been an ongoing struggle to fight against colour blindness to address the impact of racial discrimination.

57. The representative of Uruguay provided information about ongoing country initiatives to promote affirmative action in the education system for people of African descent, and asked about ways to continue to enforce and implement affirmative action to bring about lasting change in the future, given its temporary nature. The representative of Egypt asked the presenter what he considered to be the most appropriate steps at the international and the national levels to address gaps between existing laws and their enforcement. The delegate of Morocco asked for the presenter's view on the effectiveness of the justice system to address racism and best practices from US experience that could be replicated,. The representative of the Republic of South Africa provided information on the country's experience in applying affirmative action through the introduction of the Employment Equity Act and asked the presenter for reasons as to why there had always been a strong reaction to affirmative action policies and measures. Brazil highlighted its positive experience with the introduction of affirmative action, and asked the presenter for reasons behind the backlash against affirmative action. The representative of the United States of America expressed the Government's commitment to address disparities in the society including through federal measures, and requested the presenter to shed more light on his work with the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund.

58. In response, Mr. Shaw emphasized that education was an engine of opportunity and that backlash in this sector was faced primarily through racial discrimination against black Americans. He observed that while several types of scholarships existed in the American educational system for people from different nationalities, groups and those with different interests, the policies most under attack were those opportunities availed to racial

minorities. He emphasized that laws themselves were insufficient, and, based on his experience, there needed to be a broader embracing of the principle of anti-discrimination. Given the present day challenges faced by African-Americans as evidenced in the recent situation in Ferguson, Missouri, he stated that there remained significant challenges and problems to be addressed, in spite of there being legislation in place. He stated that the fight against racial discrimination could not be won by lawyers but rather by politicians, and gave the example of Gandhi and Mandela, who despite being lawyers, were politicians who believed in equality and justice. According to Mr. Shaw, the backlash against affirmative action measures has been due to racial discrimination and the inability of people to deal with a long legacy of racism and to speak about it, by trying to leave it behind, including by ignoring what is an unpleasant part of a country's history. It is also a challenge to maintain affirmative action policies and programmes, as opportunity was often seen as a zero sum game. In conclusion, he gave a brief account of how the NAACP Legal Defense Fund had become the model for legal defence groups worldwide from its early days in the fight against racial discrimination.

59. At the 8th meeting on 10 October, Ms. Elisa Alonso Monçores, Researcher at the Instituto de Economia/UFRJ in Brazil gave a presentation on "Affirmative actions in Brazil: Recent experience and social indicators". The expert noted that her data stemmed from LAESER, a research group of the Federal University of Rio de Janeiro (UFRJ), working on race relations in Brazil (www.laeser.ie.ufrj.br).

60. She noted that Brazil had the second largest population of people of African descent in the world (after Nigeria) and the biggest "Afrodescendiente" population in the Americas. In the 2010 national census, 96.8 million Brazilians self-declared themselves as "Afrodescendientes", representing 50,7 per cent of the total population. Brazil's affirmative action policies were focused on the educational sector and access to public universities. She noted that over a period of time, the country's illiteracy rate had steadily declined; nevertheless, the comparative rates of illiteracy for "Afrodescendants" and whites remained highly unequal. In recent decades, there had been a pronounced increase in the average years of education for both people of African descent and the white population.

61. Ms. Monçores pointed out that generally there were more white students in private and public universities and at private schools. Private schools were considered of higher quality, whereas public universities were perceived as offering the best education. In 2013, statistics highlighted that 89,3 per cent of young "Afrodescendants" (between 18-24) were not attending university.

62. The expert explained that Law No. 12,711/2012, adopted in August of 2012 was the basis for affirmative action policies in Brazil. She noted that fifty per cent of all student slots at the public universities were reserved for people of African descent, and the remaining fifty per cent were subject to competition. This corresponded to the latest census of the Brazilian Institute of Geography and Statistics (IBGE). She added that as yet there was no affirmative action law with respect to the labour market. Draft Law 6783/13 had passed the House of Representatives on March 26th 2014 and was still pending in the Senate, reserving twenty per cent of public service posts for people of African descent. This Law would not apply to the legislature and the judiciary.

63. During the interactive discussion, the representative of Italy noted that the data presented by the expert did not indicate specific reasons for discrimination, as the discrimination and inequalities in access to university education could be attributed to race as well as to other socio-economic factors. The delegate inquired whether affirmative action policies of the State applied to poor white people in Brazil, and highlighted the problems faced by some European countries in the collection of disaggregated data.

64. Mexico requested data on the number of people of African descent and the delegate of the Republic of South Africa inquired about how long the affirmative action measures taken by Brazil would be kept in place, and what event or development had triggered the initiation of the affirmative action policies.

65. Responding to a question from the delegate of the Republic of South Africa about the efficiency of affirmative action, the expert noted that the impact of affirmative action had not yet been assessed in Brazil. She explained that graduates that had entered through the quota system attained lesser results than their peers upon entering university. During the course of their studies, they would often adapt to the new environment and would graduate in greater numbers compared to other students. In general, she noted that it was important to promote education. A smaller number of people of African descent graduated from high school; therefore, fewer people of African descent could attend university. However, as society underwent changes and the level of education among the general population (which was to a large degree of African descent) increased, that problem would decrease. She added that the overall efficiency of affirmative action would be studied during the next ten years.

66. The representative of Morocco asked about lessons learned which could be replicated elsewhere and inquired about why affirmative action policies focused only on people of African descent, while it appeared that indigenous populations were not included. Ms. Monçores noted that the indigenous population was much smaller, whereas people of African descent represented more than half of the country's population. Her research group studied people of African descent, as research issues concerning the indigenous population were "complex". She noted that it was not common in Brazil to integrate the study of both groups and that quotas were introduced for both groups.

67. Answering a question from the South African representative, the expert provided some context and noted that plans for introducing affirmative action policies had commenced in 2003. She explained that affirmative action was supported by the strong "Black movement" which had been mobilized in the lead up to the Durban Word Conference against Racism. The delegate added that Brazil was never a true racial democracy, and that indeed strong racism existed not far below the surface. The implementation of affirmative action policies had resulted in more open discussions about race and racism in Brazilian society.

68. The Brazilian representative added that the history of racism in Brazil was characterized by invisibility. In the 1980s, the country still reported to CERD that there was no racism in Brazil. That attitude had changed after the process of democratization. People of African descent were very well organized and Brazil featured a Ministry for Racial Equality. The representative noted that the Durban World Conference against Racism and the subsequent processes were essential to the developments in the country. Some questions were complicated, such as how to correctly address the linkages between socio-economic status and race.

69. The delegate of Mexico inquired about the labour market, and the expert noted that some federal states had introduced quotas for public service – but that was not yet the case at the federal level. Currently, more white people served in the public service than people of African descent (approximately 60 per cent of the public service consists of white civil servants).

70. The representative of the Bolivarian Republic of Venezuela noted that similar problems existed in other countries of the region, which shared a similar history and same context pertaining to racism. He noted that the mandate of the Working Group of Experts on People of African Descent had been focused on precisely those issues noted in the expert's presentation. He mentioned that his country supported the policies presented by the

expert. The representative of Uruguay also noted that the situation was similar in Uruguay. Affirmative action also existed, though only ten per cent of the population were of African descent. The law in Uruguay focused more on public service than the educational sector. The two countries were however, exchanging information regarding their experiences in that area. The representative also asked if Brazil had encountered the problem of "filling quotas". The expert replied that that was sometimes the case. Certain quotas existed (such as a 30 per cent quota for female parliamentarians), but there were not enough women parliamentarians to fill that quota.

71. The Chairperson-Rapporteur noted that according to the expert's presentation, students who were disadvantaged in early life could do well later in life. He inquired if that meant that they would also have better employment opportunities and if so, were they consequently better integrated in society. The Chairperson-Rapporteur also asked if some structural analysis had been undertaken and if the question of class and race been looked at in order to create upward mobility in Brazilian society. The expert answered that the integration of those who had benefitted from special measures in society had yet to been studied. She expressed some caution about the assessing the intersection between class and race, in terms of an economic analysis. There was a strong linkage between various factors that could lead to discrimination, such as social class, economic status and race. She underlined the fact that all aspects were of importance and that economic models had difficulties isolating for the impact of these various social factors. Professor Shaw added that race and class were indeed very often interlinked, noting that inequality was on the rise, on the global level as well as within certain countries. He stated that the increasing inequality had already reached crisis proportions tearing apart the social fabric in some countries.

72. The representative of Ghana pointed out that many historical and current conflicts were not fought among people of different racial backgrounds, but that conflicts were regularly sustained by the perception of superiority of one or both sides to the conflict. The representative noted that respect for the individual must always be the cornerstone of any policy. He also expressed support for the work of the Committee in contributing to the topic of racism and sport.

73. On 13 October, during the 9th meeting, Ms. Dimitrina Petrova, Executive Director of the Equal Rights Trust gave a presentation on Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.

74. She introduced the concept of a unified human rights framework on equality which offered a holistic approach, recognizing both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brought together: a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education and the provision of goods and services and c) status inequalities and socio-economic inequalities. This conceptual framework was expressed in the Declaration of Principles on Equality adopted at an expert meeting in 2008 and subsequently endorsed by various experts and activists on equality and human rights from around the world.

75. She explained that, in her view, the synonymous concepts of special measures, affirmative action and positive action should be seen in the light of the modern understanding of non-discrimination and equality as legal rights. As such, positive action is a necessary element of the right to equality. But it was very important to note the growing trend of interpreting "special measures" as part of, rather than an exception to, equal treatment. For example, the Committee on the Elimination of Discrimination against

Women (CEDAW) in its General Recommendation No. 25 stated that under the Convention, temporary special measures "should target discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms." The notion of positive action should be similarly applied in the context of the rights to race-based equality and non-discrimination protected by the ICERD. The CERD General Recommendation No. 32 went a long way toward defining special measures as mandatory in a substantive equality paradigm, departing decisively from interpreting them as a supplementary afterthought. Having identified patterns of substantive inequality, including on the grounds of race, ethnicity and nationality, States should be required to take positive action measures to address them.

76. Special measures could be classified into different categories according to the purpose, or the compelling public interest they satisfy. She outlined different typologies of special measures identified both in the academic literature and in legislation. Professor Christopher McCrudden had identified five different types of affirmative action: (i) eradication of practices that have the effect of disadvantaging a particular group, such as a word-of-mouth hiring; (ii) policies that seek to increase the proportion of members of a previously excluded or under-represented group; (iii) outreach programmes, designed to attract members of under-represented groups; (iv) preferential treatment, or reverse discrimination in favour of a certain group; (v) redefining merit by altering the qualifications necessary for a post so as to encourage recruitment or promotion of members of a disadvantaged group. It should be noted, however, that "reverse discrimination" was increasingly excluded from the scope of legitimate special measures, as was the synonymous "positive discrimination" – justly described by CERD as a contradiction in terms.

77. She added that the countries which have significant experience in applying positive action measures included Canada, South Africa, some of the Member States of the European Union, the USA, and India. But there were also cautionary tales, such as Malaysian experience, where measures seemingly developed into entrenched privileges.

78. She recommended that: (i) UN mandate holders should engage in an effort to consolidate, harmonize and update the international human rights framework related to equality, in order to position special measures/positive action in the new, holistic legal framework, which was capable of reflecting both the overarching aspects and the "intersectionalities" of racism, racial discrimination, xenophobia and related intolerance with all other forms of bias and discrimination; and (ii) UN mandate holders, particularly the treaty bodies, should issue interpretative guidance to construe the denial of special measures as a form of discrimination, by analogy with the denial of reasonable accommodation in CRPD. The lack of positive action (also known as affirmative action or special measures) to overcome past disadvantage and accelerate progress towards equality of particular groups could constitute a violation of the right to non-discrimination or the right to equality. She explained that was not a new standard, but simply a corollary of the recognition of special measures as a necessary part of the right to non-discrimination, and of their mandatory character (the expert referenced CERD General Recommendation 32, paras. 20 and 30). Positive action measures were most commonly used to promote equality within the ambit of socio-economic rights such as, for example, education, work, housing or health. Examples included the recognition of special protection and special consideration to the needs of the Roma due to their different lifestyle (*Orsus v. Croatia*, European Court of Human Rights).

79. She noted that, in her view there were no significant substantive nor procedural gaps in the international human rights legal system related to special measures. Rather there was: (i) a need to update, harmonise and unify the international legal framework related to equality, and (ii) a need to fill certain interpretative gaps, and provide guidance on certain aspects of "special measures", including through explicit recognition that the denial of

special measures, where they were mandatory (in order to realise the rights to non-discrimination and equality) constituted a form of discrimination.

80. During the discussion that followed, Brazil recalled efforts in Latin America to consolidate the laws on discrimination. Countries aimed, under the OAS umbrella, at drafting one convention that would encompass all forms of discrimination. As there was no consensus on some questions, two conventions were drafted and adopted as a solution. The representative of Brazil also asked if new norms on special measures were needed.

81. Ms. Petrova responded that while she saw no substantive or procedural gaps in the existing legal framework, there may be a need for further interpretation on how special measures and equality were related. Such an "interpretation gap" could be addressed in the form of another general recommendation by the CERD.

82. The representative of Morocco asked if the existing analysis of special measures in a number of countries could be compiled in one study. The expert noted that such compilation was possible, however its value would be hard to assess, as there was no rigorous quantitative assessment on the efficiency of special measures. That lack of quantitative assessment was also due to a lack of reliable statistics and in many regions, statistics on ethnicity were very controversial. There were also issues concerning data protection, as well as the quality of existing statistics was at doubt. Countries often used self-identification in order to determine ethnicity, which could be very insufficient; and it was not clear if data were comparable across borders.

83. Asked about her personal assessment of quotas, Ms. Petrova noted that she was not in support of them, as they often created more problems than benefits. In her view, it was advisable to empower people, through outreach programmes, clear targeting initiatives, mainstreaming and other measures, than to introduce quotas.

84. The representative of the United States noted that special measures needed to fit the local context and that consequently a certain amount of State discretion was required. Ms. Petrova replied that the best bodies for assessing the validity of special measures were the courts. It should be kept in mind that special measures were always purpose-driven, and designed for a specific purpose.

85. The Chairperson-Rapporteur noted that in many countries the group facing discrimination was in the minority; however, there were other countries such as South Africa or Brazil were those that were subject to discrimination were the majority of the population. The expert noted that the key issue was that of disadvantage, rather than the proportion of the population. With the development of equality law, the empowerment of the weakest had increasingly become the purpose of this law. In her view, the trend was moving in the direction of transformative equality and protection of the weaker members of society.

C. Summary of the expert presentation and initial discussion on the topic of "Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance"

86. At the 10th meeting on 13 October, Mr. Pedro Mouratian, President, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), Argentina, briefed the Committee on the work of his organization under the topic of "National mechanisms". Mr. Mouratian noted that the institute was one of few specialized bodies in the region of Latin America. It was founded in 1995 pursuant to the Law on National Institution against

Racism. He added that INADI's history is strongly linked to the Durban process, during which Argentina committed to drawing up a national plan against racism. Since the inception of that plan, equality had become a cross-cutting policy issue in Argentina.

87. He explained that INADI was a decentralized organization, present in all of Argentina's provinces and had a staff of 470 civil servants working full time.. It was governed by an advisory body (10 representatives of civil society) and a board (that also included representatives of the States and civil society). While the president and the vice president were nominated by parliament, INADI, although a state institution enjoyed considerable independence and had its own budget. Working under the Human Rights Secretariat, the institute focused on two issues: i) the substantive matters of discrimination; and ii) the receipt of complaints, that were followed up by the delivery of opinions. He underscored the fact that INADI had cross-cutting mandate – addressing many areas of life.

88. The goal of INADI was to change societal behaviour which has a human rights or discriminatory approach and that its substantive work was directed at the promotion of equality. The institute cooperated closely with civil society organizations that fought discrimination and it also coordinated civil society networks. The institute also monitored legislative proposals. He cited three laws as particularly noteworthy: The 2004 Migration Act, the Equal Marriage Act, and the General Equality Act.

89. He underscored the fact that every kind of discrimination was considered a State matter in Argentina, and that INADI was consulted on bills before their submission to Parliament. He also highlighted INADI's work in the area of awareness-raising, including specialized materials which integrated non-discriminatory practices. Mr. Mouratian also commented on the issue of invisibility of people of African descent in Argentina, noting that these communities although historically large in number, now were a much smaller population, often hidden from view. He stated that the national institution for statistics and the national census were gathering statistics and those measures were aimed at awareness-raising and to reaching these communities which had been victims of serious discrimination over the centuries.

90. Mr. Mouratian told delegates that one of the problematic issues in Argentina was discrimination in football and that INADI was targeting it by observing football matches. INADI also conducted awareness-raising campaigns together with UNICEF and cooperated with sports journalists to spread anti-discrimination messages. He explained that this work was proving successful. In 2010, one third of all football matches had to be suspended due to discrimination and xenophobia, while now only one of six matches was suspended.

91. During the discussion which followed, Pakistan inquired whether guidelines or complementary standards at the international level were required to achieve uniformity of objectives so that countries had a standard by which to assess their national situation. Mr. Mouratian noted that each country was different, that there were many laws already in place, and that was important to use those laws and conventions in order to promote national legislation.

92. Further to Mr. Mouratian's presentation, the European Union underscored its full commitment to the rights of LGBT persons and recognized the important role played by civil society in this regard. The delegate further stressed the importance of national mechanisms and inquired if guidelines for setting up new national mechanisms would be useful. Mr. Mouratian agreed that national mechanisms were of importance, acknowledged the UN's role in assisting the creation of such institutions and national plans, and also emphasised the importance of networking among those institutions to create synergies and exchange experiences.

93. Asked about the role of the media by the European Union, Mr. Mouratian noted that the media played a key role in awareness-raising; however, media outlets could also create

stigmatization and confirm societal prejudices. INADI consequently published handbooks for journalists to avoid such stereotyping, and it also observed national broadcasting in order to analyse media content and issue recommendations. He underlined that in doing so, INADI was careful to avoid any infringements on the independence of media and the freedom of expression and opinion.

94. The delegate of Morocco inquired about the division of labour between INADI and the Ombudsman of Argentina. Mr. Mouratian explained that the Ombudsman, created following constitutional reform, had the main task of follow-up on individual complaints. While INADI and the Ombudsman cooperated on a number of issues, issues related to discrimination were automatically referred to INADI.

95. The representative of Bolivarian Republic of Venezuela noted that INADI was setting a good example in the region. Venezuela had been learning from these good practices, and would soon be joining the network of national mechanisms to improve institutional cooperation and the exchange of experiences. The representative acknowledged the issue of racism in sport, supported further cooperation in that area, and fully supported the mandate of the Ad Hoc Committee to draw up international standards.

96. Brazil acknowledged its national-level cooperation with INADI, noting that several institutions for the promotion of racial equality, such as the SEPPIR existed in Brazil but pointed out that despite the close cooperation the two institutions also differed, in that they served different societies, with different populations. Brazil faced similar challenges regarding sports and football, as there were episodes of racism at Brazilian matches. A major team was expelled from national competition due to actions of supporters of that team. The delegate suggested that the Committee could further discuss this topic as a theme, and while perhaps not elaborate a standard, guidelines or plan of action could be considered.

97. A representative of the non-governmental organization "African Reporters for defence of human rights" complimented INADI for its work and noted that it was important for people of African descent to find their place in Argentinian society. The 1st of January 2015 marked the beginning of the Decade for People of African Descent, and he asked the expert to elaborate on any cases of discrimination that he had handled involving people of African descent. Mr. Mouratian replied that he had handled several such cases, highlighting the case of an Argentinian of African descent returning to Argentina with a valid passport, detained by immigrations officials who did not realize that there were Argentinians of African descent.

98. A representative of the non-governmental organization "Indian Council of South America" inquired about INADI activities to address issues concerning racial discrimination and violations of the right of self-determination of indigenous peoples. Mr. Mouratian replied that Argentina had taken steps to acknowledge its indigenous heritage. The 2006 Law on Expropriation of Land was an example in that regard, as it was an attempt to change the culture of the country.

99. The representative of Chile requested more information regarding the suspension of football matches, and inquired how INADI convinced football leagues to join human rights campaigns. The expert noted that discrimination in football was widespread, and confirmed that it was important to work with associations, and noting he importance of political decisions in that regard. In addition, cooperation with international agencies, such as UNICEF, was highly important and was responsible for good results.

100. In answer to questions from Morocco, the expert noted that INADI currently had 23 provincial offices in addition to its headquarters in Buenos Aires. He explained that resources were distributed according to needs in the country based on where discrimination was particularly prominent.

D. Summary of the expert presentation and initial discussion on the topic of "Xenophobia"

101. The topic of "Xenophobia" was discussed at the 11th meeting on 14 October. A presentation was made by Mr. Ioannis Dimitrakopoulos, Head of the Equality and Citizen's Rights Department at the EU Fundamental Rights Agency. He provided an overview of the work of the Fundamental Rights Agency (FRA), which is a body of the European Union, created in 2007. He stated that FRA undertakes data collection and analysis to assist EU institutions and Member States in their efforts, as duty bearers, to comply to European and international human rights standards reflected in the EU treaties and the EU Charter of Fundamental Rights.

102. He explained that the Agency's mandate was to collect reliable, comprehensive and comparable data through a series of EU-wide surveys on discrimination and hate crime by interviewing large random samples of different target populations. The surveys target specific population groups, such as migrants and minorities, and select random samples who are asked how they are treated, if they experience discrimination and intolerance, and if their human rights are fulfilled. The surveys gave individual rights holders a voice through FRA reports which reach decision and policy makers, assisting the development of evidence-based legal and policy responses.

103. He pointed out that data published by law enforcement agencies and criminal justice systems in the EU Member States show great fluctuation between 2011 and 2012 in officially recorded crime in the EU with racist, xenophobic, anti-Roma, anti-Semitic or Islamophobic/anti-Muslim motives. In some countries there was a decrease in officially recorded racist crimes, while an increase of the same in other countries. Mr. Dimitrakopoulos noted that official data are not comparable, as they are collected using different methodologies, they are also not always comprehensive and cannot show the full extent of the problem, as hate crime tends to be both under-reported and under-recorded.

104. Mr. Dimitrakopoulos highlighted the fact that the results of large-scale surveys carried out by FRA, which target specific population groups, show that hate crime and discrimination remain a problem for a sizeable proportion of respondents. At the same time, the results also show that victims and witnesses of such crimes and discriminatory treatment often do not report, to law enforcement, the criminal justice system, other competent public bodies, NGOs or victim support groups. Between 57% and 74% of incidents of assault or threats experienced by members of minority or migrant groups surveyed in the EU were not reported to the police. He said that the main reasons for non-reporting for all these respondents include that "nothing would change" by reporting incidents, that "such incidents happen all the time", and that they "did not trust the police".

105. In order to tackle the problem of hate crime, the EU has put in place a broad set of legal and policy measures, including criminal legislation penalizing public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin; legislation prohibiting discrimination on the grounds of racial or ethnic origin and religion; and also the provision of financial support to address racism, xenophobia, and related intolerance through financial instruments, such as the Fundamental Rights and Citizenship Programme and the Programme for Employment and Social Solidarity. In 2012, a directive establishing minimum standards on the rights, support and protection of victims of crime required individual assessments to take into account personal characteristics of the victim, including ethnicity, race, religion, sexual orientation, disability, residence status, and gender identity or expression. The assessments should also take account of whether it is a hate crime, or a crime committed with a discriminatory motive.

106. He stated that these responses are apparently not sufficient. At the level of legislation, hate crime should recognize the motivations underlying it and the effect it has on victims. At the policy level, this means implementing policies that will lead to collecting reliable data on hate crime that would record, at a minimum, the number of incidents of hate crime reported by the public and recorded by the authorities; the number of convictions of offenders; the grounds on which these offences were found to be discriminatory; and the punishments issued to offenders. This should be supplemented by practical mechanisms to encourage victims and witnesses to report incidents of hate crime, as well as mechanisms that would show that authorities are taking hate crime seriously. He noted that the Fundamental Rights Agency has recently been asked to work together with Member States, at their request, to assist them in efforts to develop effective methods to encourage reporting and ensure proper recording of hate crimes.

107. According to the speaker, what is currently necessary, in the EU context, is not additional legal standards, but rather the implementation of existing standards and effective monitoring. The FRA seeks to achieve this by developing specific indicators based on the model developed by the OHCHR, for measuring implementation of human rights standards. He said that in future, FRA will work on indicators concerning racism, xenophobia and related intolerance focusing on hate crime. He stated that indicators are neither designed, nor suitable for, ranking Member States, but that their objective is to highlight the norms and principles of fundamental rights enshrined in the EU treaties and translate these into contextually relevant indicators for implementing and measuring progress made at national level. He suggested that developing such indicators and populating them with data can contribute decisively in promoting human rights standards by strengthening accountability and empowering those most vulnerable and marginalized.

108. The delegate of Pakistan, on behalf of Organization for Islamic Cooperation, stated that there has been an increase in religious intolerance and discrimination in many parts of the world, and asked the speaker to elaborate on concrete steps taken by the FRA to curb religious intolerance and discrimination in European Union Member States. With regard to the collection of data, the delegate inquired about evidence regarding incitement to imminent violence.

109. The representative of the USA requested additional information on quantitative indicators, including their usefulness, advantages and limitations.

110. The delegate of the Republic of South Africa, on behalf of the African Group, pointed out that the speaker's comment on the need for complementary standards was a moot point, as the World Conference against Racism in Durban had already identified a need to elaborate complementary standards, in the form of an additional protocol or a convention, and that now the question was how this would occur.

111. In his reply to the delegates' questions, Mr. Dimitrakopoulos emphasized that the FRA applies existing definitions, as it is not a standard-setting institution. He noted that during the FRA's surveys rights-holders are questioned directly, through a detailed questionnaire which asks them whether they had experienced unequal treatment, rather their general views on the subject matter. With regard to religious intolerance, the presenter said that the survey respondents sometimes were not able to distinguish whether the discrimination they faced was ethnic, racial or religious discrimination. He said that in 2009, the FRA published a report analysing the survey data of Muslim respondents and in 2012, a FRA survey focused on Jewish people living in nine EU Member States. He cautioned that a survey is a snapshot at time, and therefore FRA is committed to repeat surveys over a regular period of time to identify trends. These trends allow Governments to target their measures more efficiently. He also said that developing indicators is not an easy task, however, measurement of factors tends to attract notice. He stated that human rights implementation is measurable.

112. The representative of Morocco stated that anti-discrimination policies often failed to materialize at two levels, in EU Member States and in the European Union Commission and he inquired about whether there were issues of political will or differences across Member States. The delegate added that the Rabat Plan of Action could be a blueprint for OHCHR action in the area of incitement to racial, national and religious hatred and asked whether the FRA incorporated the Plan in its work.

113. The EU stated that the FRA produces reliable and comparable data, helping the EU institutions and Member States at the national and regional level and its work is transparent and publicly available. It was noted that racism is a global issue, affecting every society and country everywhere in the world, and urged other regions to share similar experiences with regard to data collection.

114. The United States of America highlighted the fact that there is no need for new standards, rather better implementation of existing standards was required. With reference to LGBT issues, the delegate also requested information about how the FRA decided which specific grounds would be covered in their survey and data collection work, and whether it was on the basis of European Union law or regulation.

115. The delegate of Pakistan, on behalf of the OIC, stated that religious intolerance in many parts of the world was increasing and emphasized that ICERD does not have a definition of xenophobia, which created several loopholes in the existing standards.

116. The delegate of Algeria asked whether the FRA interacted with the European Commission "European barometer work" and whether racial discrimination is considered in those surveys. The delegate inquired how the European Charter was implemented on the ground, and whether the FRA analysed the implications of case law related to xenophobia and hate crime. Adding that preventative approaches, such as human rights education and good practices are useful, there are, nonetheless, certain limits which require legal and policy measures and that legal issues are part of a preventative approach. It was added that when victims are forced to take their cases to the European Court of Human Rights, there is likely a lack of protection.

117. In reply, the presenter noted that concerted and continuous efforts are required, particularly in the area of education, as that is where young people learn how to live in multicultural societies. He said that moving from a homogeneous to a multi-ethnic society will take some time. He stated that the manifestation of Islamophobia varied, depending on the Member State, and that there could be different reasons why Muslims would be treated differently. The fact that victims could not distinguish between ethnic or religious discrimination shows that they are intertwined. He noted that it is important to empower victims to seek redress and improve the way police handle hate crimes. He added that definitions could be discussed at length; however, it was important to see what people experienced on the ground. In his view, there is sufficient case law that provides definitions.

118. The delegate of Morocco highlighted the fact that perhaps victims were unable to distinguish the exact grounds for the discrimination they faced because they faced multiple forms of discrimination. He noted that surveys might not be the appropriate approach to collect data about racial discrimination. He emphasized the need for victim-centred approaches, as the victim of the discrimination might not be in a position to reply adequately to the survey and that the understanding of a question, and hence the responses, could change from one survey respondent to another.

119. The delegate of the Republic of South Africa pointed out that it had not been stated that racism, racial discrimination, xenophobia and related intolerance are necessarily attributed to one particular region, and noted that the persistence of xenophobia is a rejection of multiculturalism.

120. The delegate of Pakistan, on behalf of the OIC, stated that only when a crime is defined and identified could it be tackled in a comprehensive manner. If there is sufficient case law, additional international standards would unify such evidence that could be applied in all countries and not only in certain regions, and that these additional standards would bring about significant changes.

121. The delegate of the Bolivarian Republic of Venezuela stated that there is a need for additional standards as there is an increase of new forms of discrimination which must be combated in a systematic and multi-fashioned level. He noted that there has been an increase of incitement to hatred in recent times.

122. In his comments, Mr. Dimitrakopoulos stated that EU policies had come a long way and pointed out that both policies and data are needed to guide policy makers, adding that it the issue is not only protection on paper, but how it is translated in real practice. He informed the meeting that victims' support services data are collected and available on the website of the FRA for each Member State. The second wave of surveys, following up on previous surveys should illustrate whether victims are willing to use and enforce their rights. He noted that there is a certain fatigue as victims state that discrimination happens repeatedly. He added that improved police training is necessary and in the EU context, it is important to eliminate impunity and to monitor systematically the implementation of existing standards.

123. The Chairperson-Rapporteur referred to historical experiences of slavery, colonialism, apartheid, and the post-colonial period which occurred in many different regions of the world, highlighting their impact on racial discrimination as it developed in the 20th century and onward. He noted that the post-independence period and ensuing immigration witnessed racism and racial discrimination in developed countries. He stated that a victim was often a victim based solely on appearance, and highlighted instances of racial profiling in different regions and locations, including airports. He added that for this reason, surveys directed at victims did not always capture this dynamic or reveal the mind-set and mentality of perpetrators or violations. Therefore, surveys, such as those collected by the FRA, should reflect perpetrators' viewpoints well. He also stated that survey results could also seemingly highlight the lack of confidence in State structures and institutions. He stated that at times, the value of drafting of new laws could represent a moral barometer, telling society that certain behaviour will not be tolerated. The Chairperson-Rapporteur inquired whether in addressing racial discrimination and xenophobia, the objective was to eliminate racism, or just to reduce it, and inquired how far racism should be tolerated.

124. Mr. Dimitrakopoulos agreed that it would be useful to study the issue and profile of perpetrators, especially since they are often thought to be bigots, racists and extremists when in fact they are often regular people. There were good grounds to look at larger social groups and how they manifest their political convictions. He underlined the importance of victims and their right to seek redress and the necessity of building trust in order that victims report crimes, so that the system can respond effectively.

E. Summary of the expert presentation and initial discussion on the topic of "Procedural gaps to the ICERD"

125. At the 13th meeting on 15 October, Mr. Anwar Kemal of the Committee on the Elimination of Racial Discrimination, made a presentation on "Procedural Gaps with regard to the ICERD." He noted that CERD had been following the discussions of the Ad Hoc Committee with keen interest, recalling that in previous sessions, CERD Committee members Mr. Alexey Avtonomov and Ms. Fatimata Binta Dah had shared valuable insights on the issue of procedural gaps; Mr. Patrick Thornberry interacted with the Ad Hoc

Committee on the subject of xenophobia; and Mr. Carlos Vazquez had presented on the subject of special measures, just the week prior. Mr. Kemal recalled the 2007 study by CERD (A/HRC/4/WG.3/7) which outlined possible measures to strengthen the implementation of the Convention, including a proposal to adopt an optional protocol to provide for an inquiry procedure. He continued that Mr. Alexey Avtonomov, in his capacity as CERD's Chairperson had emphasized the fact that the Committee believes that the substantive provisions of the ICERD are sufficient to combat racial discrimination in contemporary conditions and that in the near future it ought to be able to address any problems without amending the Convention, substantially.

126. He stated that Mr. Avtonomov had also suggested, however, the possibility of an optional protocol to the Convention adopting procedures to make possible to undertake country visits to selected countries for the purposes of investigating and evaluating the situations. He concurred that implementation of the ICERD could be strengthened if supported by the optional protocol to establish an inquiry procedure. Such an inquiry procedure already existed for the Committee against Torture, CEDAW, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child. He noted that ICERD, adopted almost 50 years ago, remained relevant to new challenges faced today, and provided guidance on relevant and applicable standards owing to its flexible working methods, including through days of discussion, adoption of general recommendations, responding to urgent situations through early warning and urgent action procedures.

127. Mr. Kemal further highlighted the important role of General Recommendations that assist States Parties in interpreting the articles of the Convention and effectively implementing their obligations. CERD had adopted 35 general recommendations, including the most recent general recommendation on racist hate speech adopted in 2013. He stressed the fact that the Committee had been able to apply the Convention effectively to address new and emerging facts of discrimination based on race, colour, descent or national or ethnic origin. He noted that the biggest obstacle to effectiveness was that a large number of countries did not submit reports at all, or their reports were chronically overdue. The second obstacle was the non-implementation of CERD's recommendations, followed by the third obstacle which are reservations to ICERD.

128. Mr. Kemal also noted that CERD did not deal with discrimination on the grounds of religion. The Committee acted only if "intersectionality" were present. That meant that if persons belonging to another racial or ethnic group were also discriminated against on grounds of religion and gender – only then would such situation fall under CERD's competence. CERD was also active when it came to early warning and urgent action. Mr. Kemal noted. CERD for example, adopted Decision 1(85) under its Early Warning and Urgent Action Procedure responding to the current turmoil in Iraq. In that decision, CERD denounced massacres and other human rights abuses by terrorist that called themselves "Islamic State".

129. Brazil (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Mexico, the Republic of Korea and Switzerland) stated that CERD's views were central to discussing procedural gaps with regard to the ICERD. These delegations were of the view that in order to prevent and combat racism, racial discrimination, xenophobia and related intolerance, the best use of the existing international instruments must be made, and the implementation at national level (particularly the ICERD and the DDPA) secured. It recalled that Mr. Kemal had stated that there were procedural gaps with regard to ICERD, in areas such as visits to countries, evaluation and follow-up procedures. By dealing with these gaps, both the implementation and monitoring of ICERD would be improved. This would also have positive impacts on other the topics that had been discussed by the Committee, such as

prevention and human rights education, special measures, xenophobia and national mechanisms. The presentation of Mr. Kemal had shown that the Ad Hoc Committee should keep discussing the issue of procedural gaps and that there was clear room for improvement. That idea had already been stressed by the "study of CERD on possible measures to strengthen implementation through optimal recommendation or the update of its monitoring procedures" in 2007. The group believed that the topic of procedural gaps should be further discussed in future sessions of the Ad Hoc Committee, in order to find ways to address those concretely.

130. The United States of America noted that Mr. Kemal proposed a protocol to ICERD that would allow country visits. The representative asked if other treaties contained similar provisions for country visits and how such visits would be organized. The expert noted that other treaty bodies indeed used country visits. An improved inquiry procedure would be beneficial to CERD as racism had become a global phenomenon and CERD would need to inquire in various parts of the world. The expert explained that he was not in a position to explain the "mechanics" of a country visit, and that CERD would rely on the Secretariat to undertake work with regard to this issue when the need arose. He agreed that such visits might be expensive if all members of CERD would decide to travel, but the Protocol could be drafted in such a way to avoid this.

131. The representative of Uruguay asked if the article 14 procedure was used frequently and if the procedure could be made more effective. Mr. Kemal explained that less than 60 countries had accepted the article 14 procedure and that CERD received very few complaints on the basis of article 14. The procedure was not well-known, and individuals might consider the procedure not worth the effort, or they might fear it. He added that many complaints were rejected because domestic remedies had not been exhausted. Nevertheless, CERD might consider taking some action in order to support the victim, if the Committee was of the opinion that the case had some merit.

132. Brazil inquired how CERD dealt with discrimination based on religion. The expert noted that in his view sometimes religion could be linked to ethnicity, and the aspects of ethnicity and religion became fused. CERD tended to treat issues of religious discrimination on a case-by-case basis, and only if there were multiple aspects of discrimination that were linked to ethnicity.

133. The delegate of Pakistan, on behalf of the OIC, reminded the Committee that a 2006 study noted that an optional protocol would be helpful. The representative asked Mr. Kemal how the Committee should proceed in his opinion. The expert noted that it was important to consult on the way forward with the CERD, following a decision made by the Committee.

134. The Republic of South Africa stated that multiple reservations made to key articles of ICERD impeded the Convention's implementation. The representative emphasized that ICERD was mainly an aspirational document for many countries that had made reservations, as the Convention was not enforceable. That constituted a protection gap. Implementation made sense only if human rights could be adjudicated, and reservations defeated that purpose. Implementation of ICERD was, however, not enough as paragraph 199 of the DDPA had held. That mandate still obliged the Committee to update the existing legal framework. The expert assured South Africa that recommendations by countries (for general comments) were considered by CERD, and that the Committee had recently published a comment on hate speech because it saw the need, and this need had also been expressed by several countries.

135. The European Union noted that the expert confirmed that CERD was able to address all new and arising challenges under the current Convention. His point that there was no substantial gap was important information for the Committee. The representative further asked what obstacles hindered full implementation according to the expert. The expert

referred to his statement and noted that the lack of responses to CERD from countries was a major obstacle as was late reporting by countries. Furthermore, countries did not respond to concluding observations. In addition, often implementation did not take place, and reservations weakened the treaty.

136. The representative of Ghana drew attention to the African Peer Review Mechanism (APRM), and noted there might be gaps in the legal framework when it came to migrants. The expert thanked the representative on the information regarding this mechanism and noted that CERD was interested to hear about developments in various regions and would appreciate receiving more information. On migrant workers, the expert noted that it was essential that countries that had not yet done so, joined the treaty. Ghana asked about the role of genocide in CERD's work, the expert stated that during the 1990s CERD became very mindful of genocide – because of massacres – and the Committee took action when a situation deteriorated. CERD had also become more sensitive to the problems of indigenous people and had taken those up in an early warning procedure.

137. Namibia noted that ICERD was not a stagnant instrument but should be subjected to constant evolution. Namibia had experienced drastic forms of racism, including hate speech which was particularly disturbing and the root causes of hate speech should be addressed. Data should be collected on the circumstances in which hate speech could arise. The representative also held that the importance of article 7 of ICERD had not diminished. An educational approach was essential to address indoctrination and inadequate education.

138. The Republic of South Africa, on behalf of the Africa Group, stated that when analysing the proposals for the future work of the Committee, one noticed that there were gaps in ICERD. The representative asked the expert about the key elements of an additional protocol. The delegate noted that ICERD was a living instrument as many forms of discrimination could not have been foreseen when it was created in the 1960s. Mr. Kemal suggested that an improved inquiry mechanism could rely on the existing procedures of other mechanisms. Country visits were needed because of the serious problems that existed when it came to implementing ICERD.

139. Italy remarked that the idea of country visits was interesting. Such visits could be important tools to increase the ICERD's implementation. However, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had already undertaken 35 country visits. The added value of CERD visits was not clear, particularly since closer cooperation between CERD and the Rapporteur could result in an improved exchange of information. The proliferation of mechanisms and visits could in practice create problems. Italy also inquired about the level of cooperation between the Special Adviser on the Prevention of Genocide and CERD when it came to early warning. The expert noted that CERD and the special rapporteurs cooperated as closely as possible, reports and information were exchanged and improved cooperation would require additional resources. Regarding country visits, the expert noted that countries would have to consent to any visit. He agreed that they had to be planned well, and in advance.

140. Morocco noted that it had regularly called upon the various human rights mechanisms not to work in separate silos, but to cooperate closely. Cooperation, such as the cooperation between CERD and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should increasingly feed into the UPR process. The representative also asked if CERD planned a general comment on "Islamophobia". Mr. Kemal agreed that the UPR played a crucial role and that all mechanisms would nurture each other. Regarding the recommendation to draft a general comment on "Islamophobia" Mr. Kemal noted that the topic and "phobias" relating to other religions were already referenced in CERD's comment on hate speech. He underlined that CERD was concerned with vulnerable people regardless of which group or religion they belonged to. Action was taken in every regard. The most troubling aspect about hate speech

was its use by politicians. In quite a few countries such hate speech was punished by voters, but that was not always the case. Religion was not the mandate of CERD, but the Committee was alert to all injustices and would act when forms of discrimination intersected with ethnic discrimination.

141. The representative of Pakistan remarked that CERD had covered procedural gaps by drafting general comments. However, States did not regard general comments as legally binding. Consequently, the representative doubted how general comments could cover substantive gaps that had emerged. Mr. Kemal noted that it was a "question of degree", as in fact, ICERD was not fully implemented, despite the fact that it was binding. As international law did not know enforcement machinery, it was impossible to force countries to respect some international frameworks. General comments were also not intended to punish countries, but assist them.

142. Egypt requested clarification on the gaps in ICERD and inquired if the Committee could tackle those procedural gaps by drafting a single optional protocol or several. The representative also asked if the Committee should address substantive gaps. Mr. Kemal underlined that ICERD was comprehensive enough and that during the last forty years CERD had taken an activist approach. The Convention, as a living document, was flexible and had covered all issues. One single protocol on country visits as suggested by the CERD, was enough to further the implementation of the Convention.

143. The Chairperson-Rapporteur recalled that during the World Conference against Racism in Durban there was a consensus that there were gaps in the ICERD. Some countries appeared to have subsequently moved away from that agreement. He added that ICERD was subject to many reservations. He stated that it could be argued that the bulk of these reservations constituted a gap. Important new phenomena such as the surge of racism in and around football pitches also needed to be addressed. The Chairperson-Rapporteur asked if CERD had addressed such issues. The expert noted that the application of peer pressure could help address the issue of reservations. It was also important to note that regarding ICERD, countries would also insist on securing freedom of expression and opinion despite the dangers of hate speech, in particular, which used by politicians remained. He noted that punishment, as had sometimes been the case, came via the voting process where voters rejected those politicians. In some other countries, such a reaction had not materialized and CERD noted those situations.

Annex II

Agenda

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda and programme of work.
4. Presentations and discussions on the topics.
5. General discussion and exchange of views.
6. Adoption of the report.

Annex III

Programme of work

1st Week					
	Monday 06.10	Tuesday 07.10	Wednesday 08.10	Thursday 09.10	Friday 10.10
10:00-13:00	UN Holiday	Item 1 Opening of the Session by the High Commissioner for Human Rights Item 2 Election of the Chair Item 3 Adoption of the Agenda and Programme of Work General statements	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Mireille Fanon-Mendes, Chairperson, United Nations Working Group of Experts on People of African Descent]	Item 5 Questionnaire [introduction of the reissued summary and discussion] –	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Theodore Shaw, Director, Center for Civil Rights, Chapel Hill School of Law, University of North Carolina, US]
15:00-18:00	UN Holiday	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Patrick Gasser, UEFA] [Jonas Burgheim, UN Office on Sport for Development & Peace] [Pavel Klymenko, FARE Network]	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Karel Francepane, Section of Health and Global Citizen Education, Education Sector, UNESCO Paris]	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Carlos Vazquez, CERD member] – General discussion and exchange of views	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Elisa Alonso Monçores, Researcher, Instituto de Economia /UFRJ, Brazil]

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2nd week					
	Monday 13.10	Tuesday 14.10	Wednesday 15.10	Thursday 16.10	Friday 10.10
10:00-13:00	Item 6 (*continued*) Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Dmitrina Petrova, Executive Director, Equal Rights Trust, UK]	Item 8 Xenophobia [Ioannis Dimitrakopoulos, Head of the Equality & Citizens' Rights Department, EU Fundamental Rights Agency]	Item 9 Procedural gaps with regard to ICERD [Anwar Kemal, CERD member]	Conclusions and Recommendations – General discussion and exchange of views – Item 10 Discussion on the introduction of new/list topics consideration of new/list topics	Conclusions and Recommendations – General discussion and exchange of views
15:00-18:00	Item 7 National Mechanisms [Pedro Mouratian, President, Instituto Nacional contra la Discriminacion, la Xenofobia y el Racismo (INADI), Argentina]	General discussion and exchange of views	General discussion and exchange of views – Conclusions and Recommendations	Compilation of the Report	Item 11 Adoption of the report of the 6th session

Annex IV

List of attendance

A. Member States

Algeria, Argentina, Armenia, Austria, Belgium, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Egypt, Ethiopia, Finland, France, Germany, Greece, India, Italy, Japan, Jordan, Korea (Republic of), Kuwait, Latvia, Lesotho, Malaysia, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Tunisia, Turkey, Viet Nam, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of)

B. Non-Member States represented by observers

Holy See, State of Palestine

C. Intergovernmental Organizations

African Union, European Union

D. Non-governmental organizations in consultative status with the Economic and Social Council

Action internationale pour la paix et le développement dans la région des Grands Lacs (AIPD-GL)

African Commission of Health and Human Rights Promoters

Indian Council of South America (CISA)

Indigenous Peoples and Nations Coalition

Rencontre Africaine pour la Défense des Droits de l'Homme

E. Non-governmental organizations not in consultative status with the Economic and Social Council

International Basketball Federation

Rugby Club Geneva